Multiple Disadvantages: An Empirical Test of Intersectionality Theory in EEO Litigation

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A rich theoretical literature describes the disadvantages facing plaintiffs who suffer multiple, or intersecting, axes of discrimination. This article extends extant literature by distinguishing two forms of intersectionality: demographic intersectionality, in which overlapping demographic characteristics produce disadvantages that are more than the sum of their parts, and claim intersectionality, in which plaintiffs who allege discrimination on the basis of intersecting ascriptive characteristics (e.g., race and sex) are unlikely to win their cases. To date, there has been virtually no empirical research on the effects of either type of intersectionality on litigation outcomes. This article addresses that lacuna with an empirical analysis of a representative sample of judicial opinions in equal employment opportunity (EEO) cases in the U.S. federal courts from 1965 through 1999. Using generalized ordered logistic regression and controlling for numerous variables, we find that both intersectional demographic characteristics and legal claims are associated with dramatically reduced odds of plaintiff victory. Strikingly, plaintiffs who make intersectional claims are only half as likely to win their cases as plaintiffs who allege a single basis of discrimination. Our findings support and elaborate predictions about the sociolegal effects of intersectionality.

Twenty years ago, Kimberlé Crenshaw introduced the idea that civil rights laws are ill equipped to address the types of inequality and discrimination faced by people who suffer multiple, or "intersecting," axes of discrimination (Crenshaw 1989). Her work has inspired two decades of research on intersectionality in many fields, including critical race theory, stratification, social psychology, and

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women's studies. Yet despite the richness of the theoretical scholarship on the legal disadvantages confronted by women of color, there has been virtually no empirical research that addresses the effects of intersectionality on litigation outcomes.

This article addresses that lacuna by examining the effects of intersectional demographic characteristics and intersectional legal claims on plaintiffs' likelihood of success in discrimination lawsuits. Using a representative sample of judicial opinions over 35 years of federal employment discrimination litigation, we show that nonwhite women are less likely to win their cases than is any other demographic group. Additionally, plaintiffs who make intersectional claims, alleging that they were discriminated against based on more than one ascriptive characteristic, are only half as likely to win their cases as are other plaintiffs. Our results suggest that antidiscrimination lawsuits provide the least protection for those who already suffer multiple social disadvantages, thus limiting the capacity of civil rights law to produce social change.

Limitations of Civil Rights Law

Federal equal employment opportunity (EEO) laws attempt to prevent and redress discrimination in employment, a major source of economic and social inequality. A growing body of literature analyzes the capacity and limitations of EEO law to ameliorate inequality in the workplace. EEO law has, to some extent, improved women's and nonwhites' position in the labor market and workforce (Beller 1982; Burstein & Edwards 1994; Eberts & Stone 1985; Heckman & Verkerke 1990; Leonard 1984, 1986; Skaggs 2008, 2009). However, a large body of legal and sociolegal literature highlights the many limitations of civil rights law in redressing inequalities at work. Some limitations stem from power disparities in litigation. Sociologists of law point out that the rights-mobilization process, in which victims must generally perceive rights violations and endure the prolonged and costly process of litigation in order to realize the benefits of legal rights, tends to penalize precisely those who rights are intended to benefit: individuals with fewer social, economic, and political resources (Albiston 1999, 2005; Bumiller 1987, 1988; Felstiner et al. 1980/1981; Galanter 1974; Marshall 2005; Miller & Sarat 1980; Nielsen 2004a, 2004b; Nielsen et al. 2010; Scheingold 1974). A second set of limitations of EEO law's potential to redress inequalities stems from mismatches between discrimination as conceptualized by law and discrimination as experienced in the workplace. EEO law generally conceptualizes discrimination as intentional, disregards its structural forms, and fails to recognize how employment practices sustain patterns of market-based discrimination (Haney Lopez

2000; Krieger 1995; Nelson & Bridges 1999; Schultz 1990; Schultz & Petterson 1992; Sturm 2001; Sturm & Guinier 1996). Additionally, courts may help to institutionalize ineffective organizational responses to law by deferring to compliance structures that symbolize attention to law but are ineffective at combating discrimination (Edelman 2005, 2007; Edelman et al. 1999, 2011; Kalev et al. 2006).

In this article, we turn our attention to a stumbling block for EEO law that has received much attention in critical race and feminist scholarship but relatively little attention in empirical analyses of inequality in the courts: intersectionality. As described below, intersectionality disadvantages plaintiffs both as a source of inequality in litigation and as a mismatch between legal conceptualizations and actual experiences of discrimination.

Twenty years of work by sociolegal scholars suggests that plaintiffs who face multiple disadvantages fare less well in civil rights litigation than do plaintiffs who suffer a single form of social disadvantage (Austin 1989; Caldwell 1991; Carbado & Gulati 2001; Crenshaw 1989, 1991, 1992; Harris 1997; Roberts 1991; Smith 1991; Wei 1996; Williams 1991). The key insight of intersectionality theory is that discrimination and disadvantage are not just additive; categories may intersect to produce unique forms of disadvantage. For example, an employer might hire both white women and black men but refuse to hire black women because he stereotypes them as desperate single mothers (Kennelly 1999); since this stereotype is specific to black women, it cannot be explained as the summed effects of racism and sexism.[1]

Intersectionality theorists have suggested two distinct processes through which people facing multiple disadvantages are subordinated in the courts, but have not explicitly distinguished between these types, causing some confusion. To highlight the fact that intersectional disadvantages comprise two distinct mechanisms of subordination, we formulate and investigate two different constructs: demographic intersectionality, in which the courts are the site of intersectional disadvantages or discrimination, and claim intersectionality, in which the law does not adequately redress intersectional discrimination that occurs in the labor market. Demographic intersectionality can be thought of as a type of inequality in litigation, while claim intersectionality can be thought of as a mismatch between discrimination as conceptualized by law and discrimination as experienced in the labor market.

[1] Although the concept of intersectionality can apply to any intersecting ascriptive characteristics, the bulk of the literature focuses on black women. Here, we use black women as the prototypical example, keeping in mind that the concept applies to other groups as well.

Demographic Intersectionality

Demographic intersectionality disadvantages occur when discrimination and/or stereotyping targets plaintiffs who occupy the intersection of two or more demographic categories. For these plaintiffs, overlapping axes of disadvantage may add up to more than the sum of their parts. Articulating the mechanisms through which intersectional stereotypes operate, social psychologists find that people sometimes merge information from multiple categories to create subcategories with attendant stereotypes (Bodenhausen 2010; Roccas & Brewer 2002), and that information about characteristics or roles can take on new meanings when nested within other categorical formations (Hutter & Crisp 2005; Kunda & Thagard 1996; Richards & Hewstone 2001; Ridgeway 1997; Stangor et al. 1992). By demonstrating that status characteristics are not always perceived independently, this experimental research suggests that intersectional stereotypes are likely to emerge and to influence social perception and judgment.

Indeed, recent empirical research on hiring and discrimination provides evidence that employers hold discrete stereotypes for various intersectional categories. Employers may stereotype inner-city blacks (but not necessarily other blacks or white inner-city residents) as lazy and dangerous (Kirschenman & Neckerman 1991; Moss & Tilly 2001). Employers also hold different stereotypes about black men and black women. They sometimes stereotype black women negatively as desperate single mothers (Kennelly 1999) or positively as responsible "matriarchs" (Shih 2002: 111). Black men, on the other hand, are stereotyped as "unmanageable workers [who are] more likely to resist authority" (Shih 2002: 102). Using census data, Kaufman (2002) concludes that employers often have preconceived notions about which race and sex combinations are right for a job and tend to select job applicants who match these stereotypes. Interview-based research and audit studies confirm that employers prefer to hire white men for low-skilled jobs (Moss & Tilly 2001; Turner et al. 1991).

Judges, juries, and lawyers are subject to the same institutionalized stereotypes as are employers. If they introduce these stereotypes into legal decisionmaking, the types of stereotypes discussed in the literature on labor-market discrimination may also affect court outcomes, with courts replicating the discriminatory practices that operate in the labor market.

Claim Intersectionality

Claim intersectionality is present when plaintiffs allege discrimination on the basis of two or more ascriptive characteristics. Critical race theorists have argued that since antidiscrimination law organ-

izes demographic traits into formal, one-dimensional categories—race, sex, national origin, and so forth—legal doctrine often fails to capture the types of discrimination suffered by intersectional subjects (Austin 1989; Caldwell 1991; Crenshaw 1989; Harris 1990; Roberts 1991). So, for example, sex discrimination is conceptualized in antidiscrimination case law as a problem affecting all women equally and in the same ways (with white women as the prototypic case), while race discrimination is understood as affecting all blacks (prototypically male) in the same ways (Crenshaw 1989; Harris 1990). Intersectionality theorists argue that this one-dimensional, categorical approach to understanding discrimination prevents civil rights law from adequately protecting members of groups that experience more than one axis of prejudice.

For example, an employer might be willing to hire black men and white women as retail salespeople but unwilling to hire black women because he thinks that customers will stereotype them in disparaging ways that will harm his business (Smith 1991: 28). Or, as another example, an employer might fire a black female employee because the employer is discomfited by her Afrocentric feminine attire or hairstyle (Caldwell 1991). Their employees might make what we call intersectional claims: allegations that they were discriminated against due to more than one ascriptive characteristic. But since these types of discrimination would not affect minority men or white women, under some interpretations of EEO law, the employer could parry a claim of race discrimination by pointing to the hiring of men belonging to the plaintiff's racial group and deflect a claim of sex discrimination by pointing to his hiring of white women (Crenshaw 1989; Harris 1990; Smith 1991).

Thus, plaintiffs who make intersectional discrimination claims may be less likely to win their cases not only because they are members of particularly derogated subgroups, but also because, given the categorical nature of discrimination law, intersectional claims are particularly hard to establish. While demographic intersectionality can produce unequal outcomes in all arenas of social life, claim intersectionality is a mechanism of disadvantage that is particular to civil rights litigation.

Lack of Empirical Research on Intersectionality and Litigation Outcomes

Although a substantial and rich literature describes the nature of intersectionality and demonstrates how intersectionality has penalized plaintiffs in particular cases, there has been no systematic effort to determine the extent to which intersectionality penalizes plaintiffs in litigation generally. Regarding demographic intersectionality, some studies have compared litigation outcomes across

gender or racial groups, but most studies have examined race and gender disparities separately, comparing all men to all women or comparing all racial minorities to all whites (Babcock 1993; Nelson 1994; Resnik 1991; Schafran 1998; Selby 1999). Since they ignore the intersection of race and gender, these studies may elide important differences among subgroups, and we remain in the dark about whether race disparities are constant across gender, and vice versa. One exception to this trend is Oppenheimer (2003), who examined a sample of 334 employment-discrimination and wrongful-discharge cases tried in the California state courts and found that black women had low win rates in cases alleging sex discrimination or race discrimination. While these results suggest that plaintiffs with intersecting disadvantaged statuses may fare worse in the California state courts, the study did not test whether the differences were statistically significant or control for other characteristics of the cases. To fully examine demographic intersectionality, we must statistically compare outcomes for white men, white women, nonwhite men, and nonwhite women.

Claim intersectionality has attracted more scholarly attention in the form of several qualitative analyses of employment discrimination opinions by critical race theorists (Crenshaw 1989; Cunningham 1998; Scales-Trent 1989; Smith 1991). This work highlights a series of judicial opinions with widely varying treatment of intersectional claims. In some cases, judges have not recognized intersectional claims as being legally cognizable and have dismissed them at the outset. Crenshaw's (1989) foundational article on intersectionality, for example, centers on the case of *DeGraffenreid v. General Motors* (1976), in which the plaintiffs established that GM had not hired any black female workers before 1964 and that all the black women hired after 1970 had lost their jobs in a later seniority-based layoff. The court ruled that black women were not a protected class under Title VII. Since the company had hired white women, no sex discrimination had occurred. Since the company had hired black men, no race discrimination had occurred either. A similar fate befell black female plaintiffs in *Jewel C. Rich v. Martin Marietta* (1975), *Ella Logan v. St. Luke's Hospital Center* (1977), and *Mary M. Love v. Alamance County Board of Education* (1984), where the judges also considered race and sex claims separately and disregarded statistical evidence of discrimination against black women as legally irrelevant.[2]

[2] In these cases, black female plaintiffs alleging race and sex discrimination were at a disadvantage because the courts considered each type of discrimination separately. Crenshaw (1989) describes another pattern of rulings in which black women were not allowed to represent all women or all blacks in class-action lawsuits. Our data do not allow us to observe the latter pattern; our measure of claim intersectionality focuses only on the former.

However, in other opinions, the courts have been sympathetic to intersectional claims. In *Jefferies v. Harris County Community Action Association* (1980), the court ruled that "discrimination against black females can exist even in the absence of discrimination against black men or white women" (quoted in Scales-Trent 1989: 17). Similarly, in reversing the district court's grant of summary judgment in *Lam v. University of Hawai'i* (1994), the U.S. Court of Appeals for the Ninth Circuit criticized the district court for imagining that racism and sexism can be evaluated separately. Finally, some opinions are mixed. In *Judge v. Marsh* (1986), the court stated that it would consider intersections of two characteristics but not three or more, out of the concern that considering too many intersections would turn Title VII into a "many-headed Hydra" and make it impossible to make any employment decisions "without incurring a volley of discrimination charges" (quoted in Scales-Trent 1989: 37).

These cases reveal the courts' varying responses to intersectional claims but leave broader patterns obscure: How many plaintiffs are bringing intersectional claims? On the whole, are plaintiffs who bring intersectional claims less likely to win their cases? And if so, can any other characteristics of the cases explain this disadvantage? These questions can best be addressed through quantitative empirical research. However, to date, there has been very little empirical research on the effects of claim intersectionality on litigation outcomes. To our knowledge only one preliminary empirical analysis speaks directly to this question. Kotkin (2009) examined 26 employment discrimination summary judgment adjudications in the federal district courts for the Southern and Eastern Districts of New York in which plaintiffs presented multiple-basis claims. These plaintiffs lost the defense motion for summary judgment 96 percent of the time, which is higher than plaintiff loss rates reported by other studies of summary judgment outcomes, providing suggestive evidence that plaintiffs alleging multiple bases of discrimination fare poorly. However, the study did not include a comparison group of single-basis claims, thus leaving it unclear whether plaintiffs alleging single bases of discrimination fared better, and if so, whether the differences were statistically significant. Documenting claim-intersectionality disadvantages requires systematically testing whether intersectional claims fare worse than other claims do.

Thus, no existing research systematically compares intersectional and nonintersectional cases and tests whether intersectional cases fare significantly worse. Our analysis addresses the lacuna of empirical data and findings on this issue by investigating intersectionality disadvantages using a probability sample of federal civil rights opinions.

The Politics of Methods in Intersectionality Scholarship

The lack of quantitative empirical work on intersectionality is due in part to methodological conflicts within critical race scholarship. The first point of controversy centers on how to use categories in research on intersectionality. Scholars who believe that the main contribution of intersectionality theory is the documentation of the detrimental effects of categorization are loath to use their own work to divide people into categories. Additionally, some scholars suggest that intersectionality cannot be captured through an interaction effect because the social construction of categories is contingent and fluid (Collins 1990; King 1988; West & Fenstermaker 1995). However, other researchers defend the importance of using categories to document inequalities (McCall 2001, 2005).[3]

The second point of disagreement centers on research methods. Critical race scholars who study intersectionality use almost exclusively qualitative and interpretive methods (Abrams 1994; Austin 1989; Caldwell 1991; Crenshaw 1989, 1991, 1992; Delgado 1995; Roberts 1991; Smith 1991; Williams 1991). Many critical race scholars criticize quantitative research as overly simplistic and positivist (Davis 2008; McCall 2005). However, a smaller group of researchers criticizes the exclusive use of qualitative methods for providing inadequate documentation of inequalities (Nash 2008), argues for the use of statistics to document differing outcomes among groups (Baldus et al. 1990; McCall 2005), and calls for greater dialogue between critical race theory and empirical research on law and society (Gomez 2004).

We argue that these conflicts can be resolved by recognizing that the best method of analysis depends on the nature of the research question and the dependent variable. While qualitative research is most appropriate for in-depth studies of experiences and identities (Harvey 2005; Hondagneu-Sotelo 2001), quantitative research may be best suited to documenting the aggregate patterns that constitute between-group inequalities (McCall 2001, 2005; Yuval-Davis 2006). While racial, sex, or other categories certainly do not richly describe people's experiences and identities, differing outcomes across these categories are important indicators of structural inequality and social stratification. Additionally, as the social categories on which discrimination is often based and through which legal claims must be pursued, these categories have real effects.

While there is an extensive research literature exploring intersectional experiences and identities, researchers have rarely sought to document the effects of intersectionality on inequality (Browne &

[3] Some researchers also find a middle ground between deconstructing categories and adopting them completely (McCall 2005).

Misra 2003). Attributing this neglect to methodological preferences, McCall argues that suspicion of statistics has "restrict[ed] the scope of knowledge that can be produced on intersectionality" (McCall 2005: 1772). This neglect is so extreme that the hypothesis that Crenshaw (1989) introduces in her foundational article on intersectionality—that intersectional plaintiffs fare worse in discrimination lawsuits—has not been systematically tested. Our study is designed to test this hypothesis.

Methods

Sample

Our study draws upon a representative sample of judicial opinions in EEO cases, allowing us to provide generalizable findings on patterns in EEO decisions. We first retrieved all federal employment opinions decided by the U.S. district and circuit courts between 1965 and 1999 and available in the Westlaw database, which yielded a sampling frame of over 50,000 opinions.[4] We then selected a 2 percent random sample, yielding 328 circuit court opinions and 686 district court opinions.[5]

Our sample is unique in its inclusion of opinions from both the district and the circuit courts. The few previous empirical studies of civil rights judicial opinions focus only on the Supreme Court and federal circuit courts (Burstein & Edwards 1994; Burstein & Monaghan 1986). While appellate opinions establish precedent and therefore become the "leading cases," the district courts handle many more cases, making them the primary federal locale for civil rights dispute resolution. Thus, including the district courts provides important information on civil rights conflict resolution where it more frequently occurs.[6]

It is important to note that while our sample is representative of judicial opinions, it is not representative of all instances of discrimi-

[4] Since Lexis and Westlaw include many of the same opinions, we sample only from the Westlaw database to avoid duplication. We used a broad search term in order to include all federal civil rights decisions issued under Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, the Equal Pay Act of 1963, two post–Civil War Civil Rights Acts, and 42 U.S.C. Sections 1981 and 1983.

[5] Once the initial sample was selected, we read each opinion and rejected those that (a) were not principally about civil rights, (b) did not involve adjudication on the merits of the case, or (c) arose from an appeal of a decision by the Merit Systems Protection Board. Rejected cases were replaced with the next case in chronological order. For this analysis, we also dropped 10 cases with missing data.

[6] We did not include Supreme Court cases because they are few in number and we wanted to examine the impact of major Supreme Court decisions on our dependent variables.

nation or charges filed.[7] Large-scale surveys tell the story of a "dispute pyramid" (Miller & Sarat 1980) in which judicial opinions reflect only the tip of the iceberg. Only 5 percent of perceived instances of employment discrimination evolve into court filings (Miller & Sarat 1980), and almost 60 percent of employment discrimination cases filed in federal court settle (Nielsen et al. 2010).[8] Intersectional plaintiffs may well be disadvantaged at all stages of the dispute pyramid, but since our focus is on plaintiffs' likelihood of success when their cases reach a judge, we do not include these earlier stages in our study.

Coding

We coded each opinion for court (which circuit or which district), judges, plaintiff characteristics, defendant characteristics, statutory claims involved in the case, challenged actions, legal theories on which the claims were based, which party prevailed (and the extent to which they prevailed), and a variety of other variables. Table 1 presents descriptive statistics for the variables used in the analysis. Given the complexity of our coding scheme, we took numerous measures to ensure intercoder reliability. We developed and refined the coding scheme through an iterative procedure involving trial coding of opinions by five researchers over a period of about one year and then ran a series of reliability checks to ensure that there were no systematic differences among the coders.[9]

Dependent Variable: Who Wins

Our dependent variable is who wins the case. This variable has three categories: employer wins (N = 595), mixed outcomes in

[7] Siegelman and Donohue (1990) note that the cases available in online databases are a biased sample of cases filed. However, most of this bias is due to the fact that most cases drop out before requiring a judicial decision, usually due to settlement. Westlaw attempts to include every federal decision, including those that are not legally "published," increasing the extent to which our sample is representative of all judicial opinions.

[8] Some cases result in judicial opinions before eventually settling (e.g., a case that survived a motion to dismiss or a motion for summary judgment and later was settled). Other settled cases never result in judicial opinions and so would not be included in our sample.

[9] Each week, five researchers independently coded five opinions, discussed discrepancies, and refined the coding scheme. This process was repeated until the five researchers reached agreement percentages of approximately 90 percent for all codes. One of the researchers then completed all of the circuit court coding. Next, district court coders, all of whom had completed a course in EEO law, underwent 100 hours of coding training. They began actual coding once their agreement percentages with previous codes consistently exceeded 80 percent. Finally, 5 percent of the district court opinions were randomly selected and recoded, and reliability checks showed no systematic discrepancies and over 90 percent agreement.

Table 1. Descriptive Statistics

	Percent	Mean (SD)
Case outcome (dependent variable)		
Employer wins	58%	
Mixed outcome	15%	
Employee wins	27%	
Type of claim		
Intersectional claims[1]	18%	
Multiple nonintersectional claims[2]	25%	
Single claims	58%	
Demographics		
White men	4%	
White women	2%	
Nonwhite men	19%	
Nonwhite women	11%	
Race missing	60%	
Sex missing	10%	
Mediating variables		
Section 1981 and Title VII claims	19%	
Section 1981 and Title VII x intersectional claim	6%	
Judicial deference to employer's structures	27%	
Resources		
Plaintiff is a union member	17%	
Government or public-interest lawyer representation of or amicus for plaintiff	9%	
Plaintiff's occupational prestige (missing set to mean)		47 (12.8)
Prestige missing	21%	
Motion/procedural posture		
Motion to dismiss	5%	
Employer's motion for summary judgment	51%	
Other control variables		
Number of challenged employer actions[3]		1.69 (.98)
Circuit court (circuit court = 1, district court = 0)	32%	
Published case	56%	
Length of opinion (pages)		6.92 (6.77)
Post-1986	71%	

[1]More than one ascriptive characteristic (race, sex, age, or national origin)
[2]E.g., race and retaliation
[3]E.g., hiring, termination, compensation

which both parties win something on the principle (N = 147), and employee wins (N = 280).[10] In all analyses, we first examine plaintiffs' odds of achieving at least a partial victory and then move on to measure plaintiffs' odds of a complete victory.

Independent Variables

Claim Intersectionality

Claim-intersectionality theory suggests that plaintiffs are at a disadvantage when they allege intersectional discrimination,

[10] We code mixed outcomes where the employer won on the principle (N = 5) as employer victories, and mixed outcomes where the employee won on the principle (N = 48) as employee victories.

Table 2. Number of Sampled Cases with Various Bases of Discrimination

Bases of Discrimination Alleged	Number of Cases (Percent of Sample)
Race and sex	60 (6%)
Race and age	21 (2%)
Race and national origin	29 (3%)
Sex and age	28 (3%)
Sex and national origin	3 (< 1%)
Age and national origin	9 (1%)
Three- and four-way intersections	28 (3%)
Total	*178 (18%)*

regardless of their demographic characteristics. We observe claim intersectionality when a plaintiff alleges discrimination based on more than one of the following ascriptive characteristics: race, sex, age, or national origin.[11] Table 2 presents descriptive statistics for the specific intersections in our sample. The intersection of race and sex accounted for one-third of intersectional claims, and race and age, race and national origin, sex and age, and three- and four-way intersections also appeared relatively frequently.

Instead of using an interaction effect, as we do to measure demographic intersectionality (see below), we measure claim intersectionality using three mutually exclusive dummy variables. We distinguish intersectional claims from cases where plaintiffs allege only one basis of discrimination and also from cases where plaintiffs allege multiple nonintersectional bases of discrimination (that is, more than one basis of discrimination of which only one or none are ascriptive characteristics). For instance, a case with allegations of race and sex discrimination is coded as intersectional, while a case with allegations of race discrimination and retaliation is not. By this definition, 18 percent of cases in our sample make intersectional claims (see Table 1).[12]

Demographic Intersectionality

Demographic intersectionality theory yields the hypothesis that various axes of disadvantage (race, sex, age, sexuality, and so on) do not operate independently in the courts. All our data on plaintiffs' demographics are coded from judicial opinions, which rarely

[11] The bases of discrimination that we do not call ascriptive characteristics are retaliation, religion, disability, family and medical leave, and pregnancy.

[12] Some allegations of discrimination based on multiple ascriptive characteristics make explicitly intersectional claims (e.g., that an employer hires black men and white women but refuses to hire black women), while others make tacitly intersectional claims (e.g., that an employer refuses to hire black women). We categorize both types of cases as making intersectional claims because intersectionality theory suggests that both should result in a reduced likelihood of plaintiff success.

mention demographic characteristics other than race or sex. Thus, although demographic intersectionality theory could apply to the intersection of any demographic characteristics, we can only test it for the intersection of race and sex. Our data are further limited by the fact that the plaintiffs' race and sex are not always mentioned in the judicial opinions. In 40 opinions, we could not determine the plaintiffs' sex. Additionally, 57 cases involved a mixed-sex group of plaintiffs or an organizational plaintiff. We combined these two types of cases into a "missing sex" group that makes up 9.5 percent of the sample (see Table 1).[13] Our data on the plaintiffs' races are sparser. Thirty-two cases involved a racially mixed group of plaintiffs. In an additional 579 opinions, the plaintiffs' races were not mentioned. We combine racially mixed groups of plaintiffs and plaintiffs whose race was not mentioned into a "missing race" category that comprises 60 percent of our sample (see Table 1). We originally coded plaintiffs' races into six categories,[14] but our sample is too small to examine each racial category separately. Therefore, we compare the 60 plaintiffs we can identify as white to the 353 plaintiffs we can identify as nonwhite, a category that includes blacks, Hispanics, Asians and Pacific Islanders, Native Americans, and plaintiffs of other nonwhite races (see Table 1). Most of the plaintiffs we can identify as nonwhite are black (84 percent). To see whether patterns differed between blacks and other minorities, we also ran our models with three racial categories and found no important differences.[15]

As might be expected, most opinions that mentioned the plaintiffs' races resulted from cases alleging race or national origin discrimination. Of the 353 plaintiffs we can identify as nonwhite, 320 alleged discrimination on the basis of race or national origin. We were concerned that the 33 opinions in which judges mentioned the plaintiff's race even though the plaintiff was not alleging racial or national origin discrimination might be unusual cases or might differ in some way from race and national origin cases. Therefore, we reran all analyses with interaction effects between the race variables and whether the case included race or national origin claims; our substantive results were unchanged.[16]

Thus, our data on plaintiffs' demographic characteristics are more limited than our data on intersectional claims: we only have

[13] In four cases, the plaintiff was identified as a gender other than male or female. Since this group of cases was too small to analyze separately, we include them with the "missing gender" group for the purpose of the statistical analyses.

[14] White (N = 60); black (N = 295); Hispanic (N = 31); Asian/Pacific Islander (N = 11); Native American (N = 2); Other race (N = 14).

[15] Results available from the authors upon request.

[16] Results available from the authors upon request.

Table 3. Overlap between Nonwhite Female Plaintiffs and Intersectional Claims

	Intersectional Claim	Other Claim	Total
Nonwhite female plaintiff	45 (42%)	62 (58%)	918 (100%)
Other plaintiff	133 (14%)	785 (86%)	107 (100%)
Total	178 (17%)	847 (83%)	

measures of plaintiffs' race and sex, and even that information is missing for a large proportion of plaintiffs. However, since we take care to distinguish between plaintiffs with missing and nonmissing data, we can draw some conclusions about the effects of race and sex on litigation outcomes. To test the hypothesis that race- and sex-based disadvantages do not operate independently in the courts, we ran regressions with variables for plaintiffs' race and sex and an interaction effect between race and sex. This modeling strategy distinguishes between white male, white female, nonwhite male, and nonwhite female plaintiffs, and plaintiffs with unknown race or sex.

Overlap between Claim and Demographic Intersectionality

Claim intersectionality and demographic intersectionality overlap but are not perfectly correlated. Nonwhite female plaintiffs are more likely to make intersectional claims than are other plaintiffs. However, not all nonwhite female plaintiffs make intersectional claims (for instance, a black female plaintiff might sue for race discrimination alone), and not all intersectional claims are brought by nonwhite women (for instance, a claim of race and age discrimination might be brought by a black man, or a white man might claim reverse race and sex discrimination). Table 3 shows the extent to which the categories overlap. We hypothesize that demographic and claim intersectionality are two separate processes of disadvantage: intersectional claims will be less likely to succeed, regardless of plaintiffs' demographic characteristics, and race and sex disadvantages will intersect in the courts regardless of whether plaintiffs make intersectional claims.

Mediating Variables

While we theorize that demographic and claim intersectionality can operate separately, we also test whether either one mediates the other by testing their effects on case outcome separately and then including both in the same model. Additionally, we explore several other potential mediating variables.

Smith (1991) suggests that plaintiffs may be especially unlikely to prevail when they file an intersectional claim under Title VII and a race claim under Section 1981, which applies only to race

discrimination. When plaintiffs fail to prove race discrimination under Section 1981, judges may throw out the race portion of their Title VII claims.[17] Smith argues that by mistakenly assuming that intersectional race and sex claims under Title VII can be considered separately, these judges prevent intersectional claims from getting a fair hearing. To test Smith's hypothesis that the combination of Section 1981 and Title VII is disadvantageous for plaintiffs making intersectional claims, we created a variable indicating whether the case includes claims brought under both statutes and an interaction effect between this variable and claim intersectionality.

Another potential mediating variable is judicial deference to institutionalized organizational structures. Judicial deference occurs when judges take the mere presence of organizational structures as evidence of an organization's compliance with civil rights law irrespective of whether the structures actually protect employees (Edelman et al. 1999; Edelman et al. 2011). For example, despite the fact that civil rights law neither mandates the creation of organizational grievance procedures nor specifies that these structures constitute evidence of nondiscrimination, and despite the fact that many organizational grievance procedures are ineffective at reducing discrimination (Edelman 1992; Edelman et al. 1993), courts have become increasingly likely over time to accept the presence of formal grievance procedures as evidence of nondiscrimination without evaluating their effectiveness (Bisom-Rapp 1999, 2001; Edelman et al. 1999). Given research that suggests that judges are often intuitive decision makers and that intuitions are often flawed (Guthrie et al. 2007), institutionalized organizational structures may provide a heuristic mechanism through which judges are more likely to assume fair governance when they are more skeptical of the plaintiffs or the claims. Kotkin (2009) notes that some federal judges treat plaintiffs who make intersectional claims like "the child who cried wolf" (Kotkin 2009: 1458). If judges are skeptical about the existence of intersectional discrimination, they may be predisposed to seek out signs that employers charged with intersectional discrimination are rational and nondiscriminatory. Increased likelihood of judicial deference—using structures as symbolic indicia of fair treatment instead of considering evidence as to whether they reduce discrimination—may indicate a subtle shift in judges' symbolic construction of plaintiffs and defendants. Thus, if deference mediates the effect of claim intersectionality, this would indicate that judges' subjective constructions of intersectional claims account for some of intersectional plaintiffs' disadvantage.

[17] For instance, in *Richardson v. Steak 'N Shake, Inc.* (1987), the court concluded that since a jury had ruled against the plaintiff's Section 1981 race claim, the court could consider only the sex discrimination portion of her race/sex Title VII claim (Smith 1991).

Another set of potential mediating variables measures plaintiffs' resources. While we cannot measure all aspects of plaintiffs' resources, we coded for three variables that shed some light on resources: unionization, involvement of government or public-interest organizations, and occupational prestige. Our first measure, unionization, is a dummy variable equal to one if the judicial opinion mentions that any of the plaintiffs were union members. Second, since government or public-interest organizations can provide a substantial legal advantage to plaintiffs, we created a dummy variable equal to one if (a) the plaintiff is a government agency or public-interest organization, (b) the plaintiff is represented by a public-interest organization, or (c) a government or public-interest organization filed an amicus brief for the plaintiff. Third, we coded for plaintiffs' occupational prestige using 1980 census occupational categories and the 1989 General Social Survey (GSS) occupational prestige scale (Nakao & Treas 1992).[18] While no single measure can capture all aspects of occupational status, we expect occupational prestige rankings to be correlated with economic and cultural resources that can help plaintiffs succeed in court. If plaintiffs with particular race and sex characteristics or plaintiffs who bring intersectional claims tend to have fewer resources, then controlling for unionization, organizational involvement, and occupational prestige should decrease the size of the intersectionality coefficients.

Crenshaw and colleagues argue that doctrinal barriers and evidentiary hurdles diminish the success rates for intersectional claims. Doctrinal barriers stem from the categorical nature of discrimination law, and evidentiary hurdles from the difficulty of proving complex claims. For example, proving that nonwhite women were less likely to be promoted requires a large enough sample of nonwhite women, white women, nonwhite men, and white men in the workplace (Kotkin 2009), making it more difficult to document intersectional discrimination than it is to document discrimination based on only one characteristic. While we cannot measure doctrinal barriers and evidentiary hurdles directly, we examine whether the opinion results from a motion to dismiss or a defendant's motion for summary judgment. In a motion to dismiss, the employer argues that there is no need to consider the facts of the case, since the plaintiff's claims are inconsistent with legal doctrine. In a motion for summary judgment, the defendant argues that the plaintiff's claims can be rejected because the plaintiff has failed to adduce evidence in discovery from which a reasonable jury could find in their favor at trial. If many intersectional cases are losing on

[18] Occupational prestige is missing for 20 percent of the sample. We assigned these cases the mean prestige score and included a dummy variable indicating which cases had missing prestige data.

summary judgment instead of on considerations of the facts of the case, this could indicate that procedural barriers or evidentiary hurdles are preventing intersectional claims from succeeding.

Control Variables

We control for several variables predicted to be correlated with employee victory: whether the case is in the circuit or district court, whether the opinion is legally published,[19] the length of the opinion in pages, the number of employer actions the employee is challenging, and the passage of time.[20] To account for change over time, we control for whether the case was decided after 1986, when the *Celotex* trilogy of decisions[21] made it easier to obtain summary judgment and the *Meritor Savings Bank v. Vinson* (1986) decision stated that employers would be more likely to prevail in some types of EEO cases if they had established certain employment structures, such as antiharassment policies and grievance procedures (Edelman et al. 2011). We also ran all models with dummy variables for each year to completely account for any time patterns; our results were substantively unchanged.

Analysis

Our dependent variable has three categories: employer victory, mixed outcome, and employee victory. Our results were extremely robust to model selection: we obtained substantively equivalent results from ordered, multinomial, and generalized ordered logistic regression.[22] We selected the generalized ordered logistic regression model because its moving base category makes its coefficients

[19] When judges declare that a decision is not for publication, it is in theory not relevant beyond the specific case for which it is issued and does not constitute precedent. Today, approximately 80 percent of circuit court opinions and the vast majority of district court opinions are unpublished (Gerken 2004).

[20] In other models, we controlled for disparate impact, disparate treatment, and hostile work environment claims. Including these variables did not affect the intersectionality coefficients, and none were statistically significant predictors of employee victory.

[21] In *Celotex Corp. v. Catrett* (1986), *Matsushita Electric Industries Co., Ltd. v. Zenith Radio Corp.* (1986), and *Anderson v. Liberty Lobby, Inc.* (1984), the Supreme Court gave federal judges more leeway to grant employers' motions for summary judgment. After the *Celotex* cases, as Second Circuit judge Patricia Wald observed, summary judgment evolved from being a limited device to eliminate patently frivolous claims to "something more like a gestalt verdict based on an early snapshot of the case" (Wald 1998: 1917).

[22] We initially ran our models using ordered logistic regression, which produces parsimonious results by assuming that all coefficients are identical across all levels of the dependent variable (Long 1997). We tested this assumption using Stata's omodel and brant commands (Brant 1990; Wolfe & Gould 1998). Both results were statistically significant ($\chi^2(12) = 70.8$ and 74.8, respectively; $p < 0.000$), indicating that the ordered logit model does not fit our data. We then considered multinomial logistic and generalized ordered logistic regression models, which had similar log likelihoods and produced substantively equivalent results (results available from the authors upon request).

more intuitively interpretable than are the coefficients from multinomial logistic regression. In each model, the first column of coefficients refers to the plaintiff's odds of achieving at least a partial victory, while the second column refers to the plaintiff's odds of a complete victory.

Results

The Increasing Prevalence of Intersectional Claims

Intersectional claims have increased dramatically over time. In the 1970s and 1980s, less than 10 percent of EEO opinions dealt with intersectional claims. As shown in Figure 1, the proportion began rising around 1990, and by the second half of the decade, more than a quarter of EEO opinions involved intersectional claims.[23] The proportion dropped somewhat in 1999, but since this is the last year we observe, we cannot discern whether this was a change in the trend or a temporary aberration. Since the total number of EEO opinions rose dramatically during this time period, the increasing proportion of intersectional claims indicates an even more dramatic increase in real numbers: we estimate that there were fewer than 100 intersectional cases per year in the district and

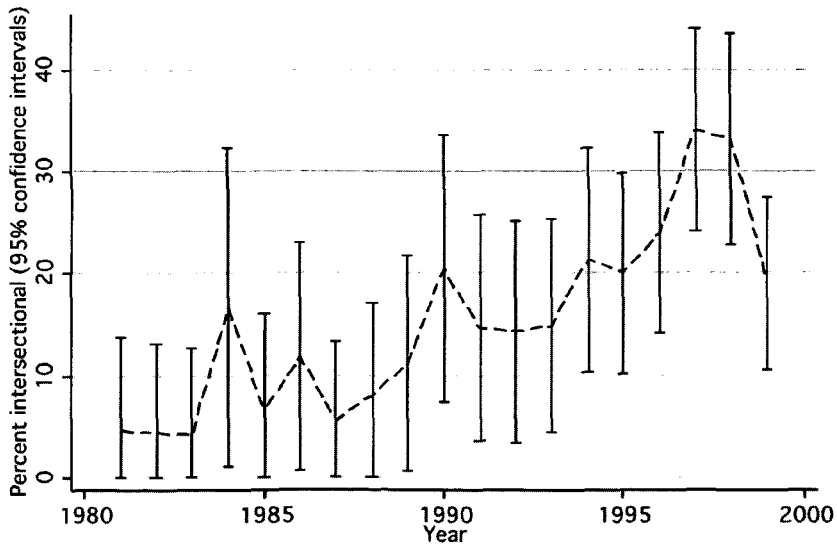

Figure 1. Percent of EEO cases with intersectional claims.

[23] Figure 1 begins in 1980 because of small sample sizes in the 1970s. The pooled proportions from the 1970s are equivalent to those in the 1980s.

circuit courts in the 1970s and 1980s and over 1,000 per year by the second half of the 1990s. This increasing prevalence highlights the importance of learning how these claims are faring.

Both Demographic and Claim Intersectionality Disadvantage Plaintiffs

Bivariate relationships between both claim and demographic intersectionality and case outcomes yield strong support for intersectionality theory. First, plaintiffs making intersectional claims are less than half as likely to win their cases as are other plaintiffs (15 percent compared to 31 percent; see Table 4). Second, race and sex disadvantages do not operate independently. White male plaintiffs were more likely to lose their cases than white women were (61 percent as compared to 55 percent; see Table 4). This female advantage, however, does not apply to black women, who are slightly more likely than black men to lose their cases (71 percent as compared to 69 percent; see Table 4).[24]

The bivariate relationships between both types of intersectionality and employee victory provide suggestive evidence of an intersectionality penalty. Next, we conducted generalized ordered logistic regressions to control for other features of cases that might account for the relationships (see Table 5). In each model we present, the first column of coefficients denotes each variable's effects on the odds that the plaintiff will achieve at least a partial victory (a mixed outcome or a complete victory), and the second column of coefficients focuses on the odds of a complete victory.

Model 1 (Table 5) shows the effects of claim intersectionality on the likelihood of employee victory. Even when controlling for

Table 4. Case Outcome by Claim and Demographic Intersectionality

	Victor:		
	Employer	Mixed	Employee
Claim intersectionality			
Intersectional bases of discrimination (N = 178)	69%	16%	15%
Nonintersectional bases of discrimination (N= 836)	56%	14%	30%
Demographic intersectionality			
White male plaintiff (N = 36)	61%	3%	36%
White female plaintiff (N = 20)	55%	10%	35%
Nonwhite male plaintiff (N = 196)	69%	14%	17%
Nonwhite female plaintiff (N = 109)	71%	17%	13%
Plaintiff's race or sex is missing (N = 653)	53%	15%	32%

[24] The demographic intersectionality section of Table 4 compares outcomes for plaintiffs whose race and sex we were able to code from the judicial opinion.

Table 5. Generalized Ordered Logistic Regressions of Employee Victory on Demographic and Claim Intersectionality

	Model 1		Model 2		Model 3		Model 4	
	Claim Intersectionality		Traditional Demographics		Demographic Intersectionality		Claim and Demographic Intersectionality	
Independent variables	At least partial victory	Complete victory	At least partial victory	Complete victory	At least partial victory	Complete victory	At least partial victory	Complete victory
Claims								
Intersectional claim	−0.63** (0.20)	−1.00*** (0.24)					−0.51* (0.21)	−0.90*** (0.25)
Multiple nonintersectional claims	0.0062 (0.17)	−0.33' (0.19)					0.070 (0.17)	−0.22 (0.19)
Single claim (omitted)								
Demographics								
Nonwhite plaintiff			−0.37 (0.30)	−1.17*** (0.31)	−0.14 (0.31)	−0.94** (0.33)	−0.17 (0.32)	−0.91** (0.33)
Missing race			0.019 (0.28)	−0.55' (0.29)	−0.019 (0.28)	−0.59* (0.29)	−0.090 (0.29)	−0.67* (0.30)
White (omitted)								
Female plaintiff			0.28' (0.14)	0.13 (0.16)	0.48** (0.17)	0.33' (0.18)	0.47** (0.17)	0.38* (0.18)
Missing sex			1.25*** (0.25)	1.11*** (0.24)	1.24*** (0.24)	1.10*** (0.24)	1.26*** (0.25)	1.12*** (0.24)
Male (omitted)								
Nonwhite female plaintiff					−0.68* (0.30)	−0.73* (0.36)	−0.55' (0.31)	−0.64' (0.37)

Standard errors in parentheses.
All models control for the number of challenged actions, circuit vs. district court, legal publication, length in pages, and post-1986.
***$p < 0.001$, **$p < 0.01$, *$p < 0.05$, '$p < 0.1$.

multiple aspects of the case, compared to plaintiffs who allege a single basis of discrimination, plaintiffs making intersectional claims have only about half the odds of attaining at least a partial victory and approximately one-third the odds of a complete victory.[25] All else equal, we predict that plaintiffs alleging only one basis of discrimination will win their cases 28 percent of the time, whereas plaintiffs bringing otherwise identical cases that allege intersectional bases of discrimination will win only 13 percent of the time.[26] This finding provides strong evidence for the hypothesis that EEO law disadvantages plaintiffs who allege intersectional discrimination.

One interpretation of this finding might be that cases alleging multiple types of discrimination were intrinsically weaker, with desperate plaintiffs adding bases of discrimination and hoping that one would be successful. At least one federal judge adopts this view, suggesting that plaintiffs who allege multiple bases of discrimination are "throwing spaghetti at the wall to see what sticks" (district court judge Ruben Castillo, quoted in Kotkin 2009: 1442). We test for this possibility in three ways. First, we control for multiple challenged actions because desperate plaintiffs might be just as likely to challenge multiple employer actions (e.g., compensation and promotion) as to allege multiple bases of discrimination. We do find a significant negative effect of the number of challenged actions on complete plaintiff victory, but the effect's magnitude is much smaller than is the claim intersectionality effect. Second, if desperate plaintiffs were likely to add both challenged actions *and* bases of discrimination to their cases, then controlling for the number of challenged actions would decrease the size of the coefficient for intersectional claims. In fact, including the number of challenged actions in the model has no such effect. Third, if alleging multiple bases of discrimination were an indicator of intrinsically weak cases, it should not matter whether or not the additional alleged bases of discrimination are based on ascriptive characteristics. Our results show that whether the bases of discrimination are ascriptive or not matters: we find a large significant negative effect for intersectional claims (those alleging discrimination based on multiple ascriptive characteristics), but only a small, marginally significant effect for cases alleging multiple nonintersectional bases of discrimination (that is, cases in which only one or none of the alleged bases of discrimination is an ascriptive characteristic). These

[25] Odds ratios are obtained by exponentiating the coefficients.

[26] We calculated these predicted probabilities with all control variables held constant at their means or modes (two challenged employer actions, district court, published opinion, seven pages long, and post-1986).

findings suggest that intersectional claims are not the result of plaintiffs' frivolously adding additional claims.[27]

Model 2 in Table 5 shows the effects of plaintiffs' demographics on the likelihood of employee victory without considering demographic intersectionality. Besides the control variables, Model 2 includes only the main effects for race and sex, which are measured by dummy variables for nonwhite plaintiffs and plaintiffs with missing race data (white plaintiffs are the omitted category) and variables for female plaintiffs and plaintiffs with missing sex data (male plaintiffs are the omitted category). Model 2 shows that all else equal, nonwhite plaintiffs have less than one-third of white plaintiffs' odds of achieving complete victories. Female plaintiffs are slightly more likely than male plaintiffs to achieve at least partial victories, but this coefficient is significant only at the .1 level.[28] If we stopped at Model 2 (hence ignoring demographic intersectionality), as do previous studies, we would likely conclude that there are no important differences between men's and women's outcomes in EEO litigation.

Model 3 improves on Model 2 (and on previous research) because it accounts for demographic intersectionality by including a variable set to one if the plaintiff is a nonwhite woman. The interaction effect has a negative and statistically significant effect on plaintiffs' odds of at least partial victory and on plaintiffs' odds of complete victory. When we include it in the model, the main effect for sex becomes a significant predictor of at least partial plaintiff victory.

Based on Model 3, and holding all control variables constant at their means or modes, white women have the highest predicted probability of a full victory (38 percent), followed by white men (31 percent), nonwhite men (15 percent), and nonwhite women (11 percent).[29] This intersectional relationship between race and sex can be understood in two ways. First, there are larger race effects for women than for men: nonwhite women fall further behind white women than nonwhite men fall behind white men. Second,

[27] While these results suggest that intersectional claims are not inherently weaker than other claims, the merit of cases cannot be conclusively discerned from written judicial opinions. A fuller measure of merit would require examination of the briefs, depositions, testimony, and other materials submitted in the context of litigation, independently measuring the underlying merit of cases and the law's construction of merit. Such an inquiry is beyond the scope of this analysis.

[28] Plaintiffs with missing sex were also significantly more likely to win their cases than were male plaintiffs. Most of this pattern is explained by the fact that many of these cases are class actions, which have high rates of plaintiff victory and also often have a mixed-sex group of plaintiffs.

[29] Kluegel and Smith (1986) show that Americans tend to be skeptical of the existence of racial discrimination while giving more credence to the idea that white women face sex discrimination. This pattern may help explain white women's high win rates.

there are different gender effects for whites and nonwhites: white women get ahead of white men, while nonwhite women fare similarly to nonwhite men.[30] Our findings, then, suggest that studies that fail to account for demographic intersectionality miss the fact that sex and race disadvantages do not operate independently in the courts.

Whereas Models 1 and 3 in Table 5 consider demographic and claim intersectionality separately, Model 4 includes both, thus allowing us to test whether either intersectionality effect is an artifact of omitted variable bias. Given that plaintiffs making intersectional claims are disproportionately likely to be nonwhite women (see Table 3), the effect of claim intersectionality observed in Model 1 might actually reflect nonwhite women's disadvantage. Alternatively, the negative coefficient for nonwhite women in Model 3 might be explained by the fact that nonwhite women are disproportionately likely to make intersectional claims (see Table 3). Model 5 shows, however, that each type of intersectionality has an independent effect on plaintiffs' likelihood of winning. The claim intersectionality coefficient remains statistically significant and decreases only slightly. Regarding demographic intersectionality, the interaction effect between plaintiffs' race and sex is only significant at the $p < 0.1$ level in Model 4, but its magnitude is virtually unchanged. The fact that the coefficients for both measures of intersectionality remain large and at least marginally statistically significant when included in the same model suggests that demographic and claim intersectionality represent two distinct pathways of disadvantage for plaintiffs. Demographic and claim intersectionality are each associated with dramatically reduced odds of plaintiff victory.

Figures 2 and 3 show the magnitude of the effects of each type of intersectionality, net of the other, with all other variables held constant at their means or modes. Figure 2 shows the effects of claim intersectionality net of demographic intersectionality by giving the predicted probabilities of complete victories for nonwhite female plaintiffs who do and do not assert intersectional claims. Even among nonwhite female plaintiffs, intersectional claims are predicted to prevail only half as often as single claims. Figure 3 shows the effects of demographic intersectionality net of claim intersectionality by giving the predicted probabilities of complete victories in single-claim cases for plaintiffs at each intersection of race and sex. Even when controlling for their increased likelihood of making intersectional claims, nonwhite female plaintiffs still have the lowest predicted probability of winning their cases.

[30] The differences in outcomes between nonwhite men and nonwhite women are not statistically significant.

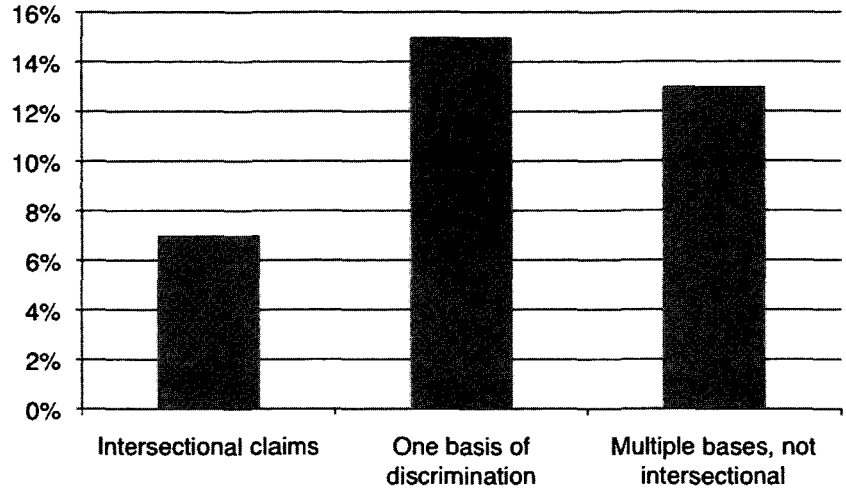

Figure 2. Effects of claim intersectionality, net of demographic intersectionality: predicted probabilities of complete employee victory for nonwhite women, holding controls constant at their means or modes.

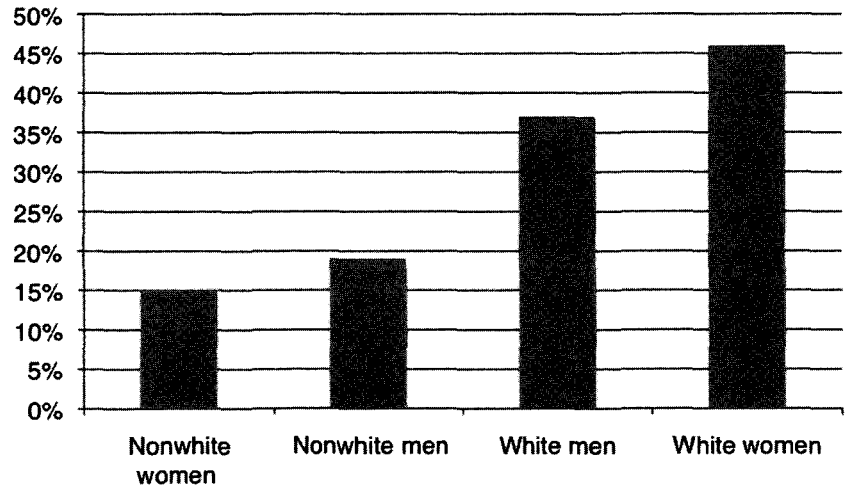

Figure 3. Effects of demographic intersectionality, net of claim intersectionality: predicted probabilities of complete employee victory for single-claim cases, holding controls constant at their means or modes.

Mediating Variables: Mechanisms for the Intersectionality Penalty

To explore how intersectionality disadvantages plaintiffs, we consider several variables that might mediate the effects of demographic and claim intersectionality on plaintiff victory. In Table 6,

Table 6. Mechanisms for Intersectionality Effects

	Model 4		Model 5		Model 6		Model 7	
	Base Model		Add Section 1981/Title VII		Add Deference		Add Resources, Doctrine, Evidence	
Independent variables	At least partial victory	Complete victory	At least partial victory	Complete victory	At least partial victory	Complete victory	At least partial victory	Complete victory
Claims (single claim omitted)								
Intersectional claim	−0.51* (0.21)	−0.90*** (0.25)	−0.49* (0.24)	−0.60* (0.28)	−0.21 (0.25)	−0.34 (0.29)	−0.096 (0.26)	−0.20 (0.30)
Claim intersec. x Title VII & Section 1981			−0.21 (0.41)	−1.07^{t} (0.56)	−0.33 (0.44)	−1.21* (0.58)	−0.36 (0.45)	−1.50* (0.60)
Multiple nonintersectional claims	0.070 (0.17)	−0.22 (0.19)	0.048 (0.17)	−0.22 (0.19)	0.079 (0.18)	−0.20 (0.20)	0.13 (0.19)	−0.22 (0.20)
Demographics (white males omitted)								
Nonwhite plaintiff	−0.17 (0.32)	−0.91** (0.33)	−0.20 (0.32)	−0.95** (0.33)	0.0050 (0.33)	−0.80* (0.34)	−0.039 (0.34)	−0.95** (0.36)
Missing race	−0.090 (0.29)	−0.67* (0.30)	−0.014 (0.29)	−0.65* (0.30)	0.082 (0.31)	−0.58^{t} (0.32)	0.082 (0.32)	−0.64* (0.33)
Female plaintiff	0.47** (0.17)	0.38* (0.18)	0.45** (0.17)	0.38* (0.18)	0.44* (0.18)	0.35^{t} (0.19)	0.31^{t} (0.19)	0.26 (0.20)
Missing sex	1.26*** (0.25)	1.12*** (0.24)	1.24*** (0.25)	1.13*** (0.24)	1.05*** (0.26)	0.97*** (0.25)	1.09*** (0.28)	0.68* (0.28)
Nonwhite female plaintiff	−0.55^{t} (0.31)	−0.64^{t} (0.37)	−0.55^{t} (0.31)	−0.59 (0.36)	−0.64* (0.32)	−0.59 (0.38)	−0.60^{t} (0.33)	−0.52 (0.39)
Mediators								
Title VII & Section 1981			0.45* (0.21)	0.28 (0.23)	0.42^{t} (0.22)	0.19 (0.24)	0.38^{t} (0.23)	0.29 (0.24)
Judicial deference					−1.71*** (0.19)	−1.84*** (0.24)	−1.72*** (0.19)	−1.88*** (0.25)
Resources and procedural posture[1]							X	X

All models control for the number of challenged actions, circuit vs. district court, legal publication, length in pages, and post-1986.
[1]Government or public-interest involvement, occupational prestige, unionization, summary judgment, and motion to dismiss.
Standard errors in parentheses. ***$p < 0.001$, **$p < 0.01$, *$p < 0.05$, $^{t}p < 0.1$.

we sequentially add mediating variables to Model 4 to see whether they decrease the size and significance of the claim intersectionality coefficient or the race/sex interaction effect. Model 4 is repeated in Table 6 for comparison of the coefficients. Mediating variables that decrease the effects of the intersectionality variables tell us something about how the intersectionality penalty works.

First, to test Smith's (1991) hypothesis that intersectional claims fare especially poorly when plaintiffs bring claims under both Section 1981 and Title VII, Model 5 adds a dummy variable set to one when the plaintiff brings claims under both statutes and an interaction effect between this variable and intersectional claims. Consistent with Smith's argument, there is a large negative interaction effect between intersectional claims and the Title VII/Section 1981 combination on the odds of employee victory. The coefficient is large, but is only significant at the .1 level; it becomes larger and statistically significant with the inclusion of more control variables in Models 6 and 7. The Title VII/Section 1981 combination is actually advantageous when not combined with intersectional claims; plaintiffs alleging only one type of discrimination under both Title VII and Section 1981 have a higher predicted probability of a full victory (37 percent) than plaintiffs who do not combine the two statutes (30 percent). Intersectional claims have lower rates of plaintiff victory even without this particular combination of statutes (19 percent), and plaintiffs who make intersectional claims under both Title VII and Section 1981 have the lowest win rate of all (10 percent).[31] Thus, Smith is correct that plaintiffs who make intersectional claims under the two statutes are especially unlikely to win their cases.

Next, we explore whether judicial deference to organizational structures mediates the effects of intersectionality. As mentioned earlier, legal endogeneity theory (Edelman et al. 1999; Edelman et al. 2011) suggests that judges may be especially likely to view institutionalized structures such as grievance procedures or formal notice policies as evidence of nondiscriminatory treatment when they are skeptical of the plaintiffs or their claims, making judicial deference a potential mechanism for the intersectionality penalty. Model 6 in Table 6 explores this possibility by including a dichotomous variable indicating whether any structures were deferred to.[32]

[31] Predicted probabilities were calculated with all control variables set at their means or modes.

[32] The judicial deference variable is set to one where judges viewed the presence of an organizational structure as potential evidence of nondiscrimination and the opinion reflects no consideration of the quality or adequacy of the structure, explicitly states that the structure is inadequate but that the inadequacy does not matter, or gives superficial consideration to the question of adequacy but the opinion includes clear indicators that the structure was inadequate.

When we include judicial deference in the model, the coefficients for plaintiffs' demographics remain virtually unchanged; thus, judicial deference does not mediate the effects of demographic intersectionality. Likewise, the interaction effect between claim intersectionality and the Title VII/Section 1981 combination remains large and statistically significant. However, the main effect for claim intersectionality is reduced by half and loses statistical significance. Thus, in cases with intersectional claims that do *not* involve both Title VII and Section 1981, judges are more likely to defer to employers' structures, and this increased likelihood of deference is an important mediator of the disadvantage faced by plaintiffs bringing intersectional claims.

In Model 7, we add three indicators of the resources available to plaintiffs (unionization, involvement of government or public-interest organizations, and plaintiffs' occupational prestige) and two variables related to the procedural posture that may indicate the presence of doctrinal barriers or evidentiary hurdles (motion to dismiss and summary judgment). When these variables are included, the coefficients for the claim intersectionality main effect decrease further; however, they were already small and nonsignificant before the addition of these controls. Including the new variables has little effect on any of the coefficients for plaintiffs' demographics and actually increases the coefficient for the claim intersectionality/Title VII/Section 1981 interaction effect. Thus, our rough measures of resources, doctrinal barriers, and evidentiary hurdles explain little to none of the claim and demographic intersectionality penalties.[33]

Discussion

Our analysis provides the first systematic empirical test of intersectionality theory by examining the effects of both demographic intersectionality and claim intersectionality on plaintiff win rates in employment discrimination cases. We find strong support for the ideas that race and sex disadvantages do not operate independently in the courts (demographic intersectionality) and that antidiscrimination law provides less protection in cases that involve intersecting bases of discrimination (claim intersectionality).

[33] In other models, we also controlled for judges' political orientations, measured using the judicial common space score method proposed by Giles et al. (2001). Michael Giles generously provided us with scores for circuit court judges, and we used data from the National Judicial Center to calculate scores for district court judges. Judges' political orientations were not statistically significant and did not affect the intersectionality coefficients.

Our results suggest, moreover, that these two types of intersectionality represent two distinct processes of disadvantage. Although nonwhite women are more likely to bring intersectional claims, this does not explain all of the disadvantage they face in court. Likewise, claim intersectionality harms plaintiffs' chances of winning, regardless of their demographic characteristics. EEO law itself seems to disadvantage intersectional plaintiffs, above and beyond any discrimination they may face in the courtroom on the basis of their race or sex.

Previous research suggested three main reasons why intersectional claims might disadvantage plaintiffs: (1) the categorical nature of discrimination law creates doctrinal barriers to intersectional claims, (2) there are evidentiary hurdles to demonstrating intersectional discrimination, and (3) judicial skepticism about intersectional claims may make intersectional plaintiffs less likely to win their cases. Our findings suggest that the Title VII/Section 1981 combination does pose a doctrinal barrier that mediates the effects of claim intersectionality and thus supports Smith's (1991) argument that judges tend to believe that intersectional claims can be neatly separated and that a ruling against the plaintiffs' race allegations under Section 1981 prohibits consideration of race intersections under Title VII. Our findings also suggest that judicial deference may be an important mechanism through which claim intersectionality penalizes plaintiffs. Controlling for judicial deference explains most of the claim intersectionality penalty for cases that are not brought under both Title VII and Section 1981. The fact that judicial deference is especially likely in cases involving intersectional claims elaborates Edelman et al.'s (1999, 2011) suggestion that judges treat institutionalized organizational structures as symbolic indicia of employers' rationality and compliance. In sum, although our data do not permit a direct test of the mechanisms through which intersectionality operates, we find some support for the ideas that intersectional claims are held back by a combination of doctrinal barriers and judicial interpretations.

Our findings have important implications for several theoretical debates in the intersectionality literature. One point of disagreement among scholars is whether intersectionality applies only to members of traditionally disadvantaged groups or whether all identities are intersectional (Browne & Misra 2003; Davis 2008; Nash 2008). Some researchers subscribe to a "multiple jeopardy" approach that assumes that women of color are more disadvantaged than other groups in all contexts (King 1988; Ransford 1980). However, recent critiques of the intersectionality literature from within argue that when limited to the case of black women, intersectionality is insufficiently developed as a general theory

(Nash 2008), and view intersectionality as a broader theory that can apply "to any grouping of people, advantaged as well as disadvantaged" (Yuval-Davis 2006, 201; see also Chang & Culp 2002; Kwan 1996; Zack 2005). A related debate focuses on whether intersectional disadvantages are "ubiquitous or contingent" (Browne & Misra 2003: 492). Some scholars argue that intersectionality affects outcomes and experiences in every social setting (Collins 1990; Weber 2001), while others suggest that its effects are contingent, with single categories sometimes dominating (McCall 2005; Yuval-Davis 2006). Our findings demonstrate that intersectionality is context dependent. Whereas intersectionality theory generally presumes that white men tend to fare the best and nonwhite women are the most disadvantaged, our findings suggest a somewhat different pattern. In our sample, white female plaintiffs had the highest chances of winning their cases, a pattern that is likely specific to the context of EEO litigation.

Our analysis also has methodological implications for the intersectionality literature. Most of the intersectionality literature to date has employed rich qualitative analyses, which have revealed much about the nature of intersectional disadvantage and intersectionality's effects on particular plaintiffs and in particular cases. But until now, we have known little about the general effects of intersectionality on litigation outcomes. Our work demonstrates the power of quantitative methods and categorization for documenting inequalities in litigation and judicial decisionmaking.

In addition to contributing to the intersectionality literature in critical race theory, our work has important implications for emerging research in social psychology and stratification, which demonstrates that intersectional discrimination occurs in the labor market. Our findings regarding demographic intersectionality demonstrate that intersecting demographic characteristics shape outcomes in the courts as well as in the labor market. Moreover, our findings regarding claim intersectionality establish that EEO law provides little protection for plaintiffs facing intersectional discrimination in the labor market.

Plaintiffs who suffer multiple disadvantages in society fare worse than do singly disadvantaged plaintiffs when they seek to assert their civil rights in court. This disadvantage operates both through demographic intersectionality, where the intersection of race and sex puts black women at a disadvantage, and through claim intersectionality, where those who assert two or more types of discrimination fare worse than do those whose cases are simpler. By assuming that disadvantages based on race, sex, and other ascriptive characteristics operate independently, civil rights law perpetuates intersectional disadvantages.

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GIRLS FOR GENDER EQUITY

NYS Sexual Harassment Hearing

Delivered by: Neillah Petitfrere, Youth Organizer/Young Women's Advisory Council
Girls for Gender Equity
May 24th, 2019

Hello, my name is Neillah Petitfrere and I am 16-years-old. I am a Junior and I attend the Brooklyn School for Music and Theatre in Brooklyn where I also live. I am a cisgender Black girl and I'm passionate about speaking out and having my voice heard to create change. I am a member of the Young Women's Advisory Council at Girl for Gender Equity who I am also here representing today. In GGE young people are engaged in the work of enacting institutional change and we work to inform policy, develop as racial and gender experts, and also receive social and mental health support. I would like to thank everyone who are here today to support and hear our testimonies against sexual harassment in young people's workplaces; schools. Sexual Harassment is an issue that takes place in several different settings; such as work, school, the streets or even home. Did you know that in 8 out of 10 cases of rape and sexual assault, the victim knew their perpetrator?

In my school, School Safety Agents, (SSA's) continually make comments about the bodies of female students and are always making attempts to flirt with students as well. If a girl is walking by, School Safety Agents will look at her in a way that is very sexual and dehumanizing. I have witnessed moments where students in my school were being harassed and it led me to feel uncomfortable and unsafe. When I feel unsafe in my school, I tend to focus less on my work and it creates an environment for me where I'm taught that what I'm wearing is more important than what I'm learning. Schools are microcosms of society. The same way adults experience sexual harassment at work and are worried about saying or doing the wrong things, are the same ways young people are experiencing sexual harassment in schools by people who are in power. These experiences lead me to question what I wear, fear being a target, and forces you to believe that what happens to you is your fault because you should have been able to "control" that man's reaction to what you were wearing.

Stories like these and so many more are reasons why I am here today calling for the New York State Legislatures to support the state expansion of Title IX and to pass the Safer New York Act. Title IX and Title IX coordinators are important because in the workplaces of young people, we are vulnerable without them and they are supposed to keep us safe. There are police officers in my school who are abusing their power and are subjecting students to sexual harassment and

violence. In particular, your support of full repeal of Civil Rights Law 50-a is important because knowing the personnel records of officers who harm students and community members should be made available to survivors. New Yorkers deserve to know who New York City and police departments across the state are employing when they come into our schools and harm us. This should be a priority for New York State. I hope you take this testimony into consideration when making your decisions. Thank you.

NYS Sexual Harassment Hearing

Delivered by: Rose Antoine , Youth Organizer/Sisters in Strength

Girls for Gender Equity

May 24th, 2019

My name is Rose Antoine. I am 16-years-old and I'm from Brooklyn. I'm currently a Junior and I attend Prospect Heights High School. I identify as a first generation Haitian American Black girl. I'm also a participant in Sisters in Strength at Girls for Gender Equity who I am also here representing today. Sisters In Strength is a restorative justice group for girls of color to shed light on issues that are important to them and support each other. Thank you for taking the time to listen to my testimony today and I hope it starts a conversation which leads to change being made.

Today I am here to talk about police brutality and the excessive force police used in my community to harm those around me and those I care about. I feel that police brutality relates to everyone. Over this past year there have been several incidents where police used excessive force on innocent people for various reason which have yet to be determined why. Once when my brother and I were driving and we ran through a red light by accident, we were stopped and had to pull over. The cop asked us if we knew what happened and my brother answered saying yes, he acknowledged he ran the red light. The cops looked at us in a very intimidating way and we felt very threatened. The police officer eventually let us go because my brother had never been stopped or recieved a ticket before. Afterwards there was a white woman that walked up to us and let us know that she had been watching and would've been a witness for us if anything were to happen or escalate. I should not feel unsafe and helpless when encountering a police officer. This situation showed me how unjust the system is and how skewed police officers views can be of people of color.

Many officers when they use brutal force, sexually harass or sexually assault community members, or who are involved in the death of someone are never held accountable or walk away with no consequence. Did you know 43% of police officers agree with this sentiment "always following the rules is not compatible with the need to get their job done[1]. Those 43 percent of police officers are in the street everyday and not afraid to use excessive force on innocent people just to say that their job is done. Did you also know that people who are African American/ black are twice as likely to be killed by a police officer while being unarmed in comparison to their

[1] vittana.org

white counterparts. These statistics tells me when interacting with police as a Black girl, I should be afraid.

We need to advocate and create a safe space for everyone and this starts with the ways that the NYPD treats our community, being accountable for their actions, and for greater transparency between the NYPD and the community it serves.

My story is not unique. There's so many young people who look like me, from communities like mine, who are in need of greater police accountability. This is why I am here today testifying. Your support of the Safer New York Act and in particular, a full repeal of Civil Rights Law 50-a is important because survivors knowing the backgrounds of police officers will help us to know their track records and keep us safer. When the community is aware of what police officers have done, we can build stronger cases for accountability, and we can become a community that prevents police violence instead of being a community that thrives on harm. Please take my testimony into consideration when making your decision. Thank you for the opportunity to speak today.

NYS Sexual Harassment Hearing

Delivered by: Staceyann King, Youth Organizer/Sisters in Strength

Girls for Gender Equity

May 24th, 2019

Good Morning/Afternoon my name is Staceyann and my pronouns are she/her/hers. I am a senior in high school and a part of Girls for Gender Equity's Sister in Strength Program or SIS. SIS helps young women of color become more aware of the social injustices that go on in our high schools and community. We primarily focus on healing and how to aid people who have experienced sexual violence and gender-based violence. I would like to thank everyone for hearing me out today. I hope everyone is well.

I attend a school that has a formal dress code policy. I understand that we are required to wear a uniform, however the policy does not always seem logical. The ways that they chose to enforce them do not make for a positive school environment. In my junior year, I had an experience where I was wearing a skirt that was above my knee and my principal and teacher called me out about it in public. This made me feel self-conscious about my body and enraged. I don't think the way I dress has any impact on how I learn. I recognize that this was not as severe an experience as many of my friends and fellow classmates. They have been sent home because of their dresses and clothing. Many of my friends live an hour or so away from school. This travel time takes away from their learning and time in class.

Additionally, we receive a robocall at 6am and at 7pm everyday about the uniform. They are pre-recorded messages that tell us what to wear in advance of coming to school. Our uniform policy is gender biased and culturally insensitive, so this message that we receive daily is offensive and is how we are beginning and ending our day. The voice recording targets female identified students and some cultural and/or religious dress because it says for us not to wear low-cut shirts, see-through clothing, short skirts, spaghetti straps, leggings, flip flops, no headbands, hair coverings, do-rags and/or headwear. This makes me feel like I am distraction and that I am responsible for my classmate learning or how they learn. Schools frequently have gender-biased dress codes and these dress codes infer that young women are responsible for their own experiences of sexual harassment because of what they are wearing. This promotes rape culture. This should not be the case in any situation because we are each responsible for our own actions and when rules are enforced it mostly targets women of color.

New York State should increase the number of Title IX Coordinators in school and expand Title IX protections. Title IX Coordinators coupled with comprehensive sex education would allow everyone to feel safer and more supported in school. Everyone deserves basic human rights and I would like for everyone to be aware of Title IX and most importantly be comfortable and safe in whatever environment they are in. I believe I should feel and truly be safe in school. Safety to me looks like coming to school and not feeling targeted or be called out on how I dress, feel guilty or ashamed of my body, and more importantly to be supported mentally and emotionally to be the best version of myself. Thank you for the opportunity to testify today.

NYS Sexual Harassment Hearing

Delivered by: Marie Stfort, Youth Organizer/Sisters in Strength

Girls for Gender Equity

May 24th, 2019

My name is Marie St. Fort., my pronouns are she, her, hers and I'm a high school student. I'm in a program called Sisters in Strength at Girls for Gender Equity. In our program we learn about power, privilege, oppression and its impact on intimate partner, sexual, gender-based violence. We also engage in healing practices, healing justice work, build community organizing, and engage in organizing work. Before I start I just want to say thank you to the Assembly Members and Senators for being present, supporting the cause, and amplifying the message. I do understand that the topics I will be speaking on can be sensitive or in other words may be a trigger to some. If you feel like you need some time to calm down please feel free to step outside and take care of yourself.

Sexual Harassment? It can be found anywhere, any place, at anytime. Places like schools, homes, in the street and at work. In the morning, afternoon, and night. It's something most of us have experienced. It could be anything from someone cat-calling you in the street or touching you in ways you don't feel comfortable with. Most people who are survivors of sexual harassment never tell anyone and it's usually at the hands of someone they know. Survivors sometimes ask themselves questions like "will they believe me", "they probably think I'm lying" or " will they think I'm a snitch" or just feel embarrassed.

Sexual harassment has a huge impact on people.I'm pretty sure we've all been in a situation where we were not comfortable with what was happening. **How does it feel to not being comfortable?** Especially somewhere you go to everyday or it's somewhere you have no choice but to go there. No one likes the feeling of being uncomfortable.I know we can't put an end to sexual harassment. Anyone is capable of sexual harassment. They might not know that what they are doing is sexual harassment but everyone is capable of it. Like how these two police officers harassed this girl and they thought she was lying because they didn't believe the two officers would do such thing. It's crazy because when we do that we just hurt the victim more and forces them to shut down. It's takes a lot for someone to open up on something like sexual harassment. It's not something we want. It's a disgusting thing that happens and we can't control it most time why not help prevent it?

Just like how we can't put an end to police brutality. It's crazy to me on how we gotta run and hide from those who's supposed to be keeping us safe and protected. Some people get blindsided by the fact that they are police officers and that they are just "looking" out for us and making sure that we're "safe". But yet they are the the ones who are quick to kill us. Beat us to death, Choking us to death shooting us. And when you ask them why it's because they felt "threatened". Threatened by what? Or "self defense" . But here's the craziest part when they kill us guess what they get Apaid Suspension from work. You know you get to stay home after killing an innocent soul and getting paid for it. Now please explain to me how will they ever learn from their so called mistakes when there's no type of consequences. They'll just keep doing it over and over again. Nothing is going to change unless we treat them how they treat "criminals". Prison time. Stop justifying the things these police officers be doing and start punishing them for what they be doing or else they are going to keep doing it. Let's start thinking about ways to prevent sexual harassment and ways to end police brutality. **To help prevent sexual harassment we could start by teaching young men ways to properly approach a lady. Help our young people to respect each other DON'T do things to others you wouldn't want to be done to you . And for our adults please when someone comes to you and tell you that they have been sexually harassed from work place, Schools, Home, anywhere. Take it seriously.** And to help put an end to police brutality, we need to start taking action let them see what they are doing will not go by like that and that there's consequences to everyone's actions . And that there's no free pass and we not favoring nothing . Thank you again to everyone for attending this hearing.

Girls for Gender Equity Testimony for the New York State Legislature
Joint Senate and Assembly Public Hearing on Sexual Harassment

Delivered by: Ashley C. Sawyer, Esq.
Director of Policy and Government Relations

May 24, 2019

Good afternoon Chairpersons Skoufis, Biaggi, Salazar, Titus, Crespo, Walker, and committee members. My name is Ashley Sawyer and I am the Director of Policy and Government Relations at Girls for Gender Equity (GGE). Thank you for being willing to host this second, unprecedented hearing in New York City, and helping to move towards a safer and more accountable New York.

GGE is a youth development and advocacy organization based in New York City, committed to the physical, psychological, social and economic development of girls and women. GGE challenges structural forces, including racism, sexism, transphobia, homophobia, and economic inequity, which constrict the freedom, full expression, and rights of transgender and cisgender girls and women of color, and gender non-conforming people of color. We do this work through direct service, advocacy and culture change. GGE has been a leader in the conversation around gender based violence, including sexual harassment and sexual abuse for close to two decades.[1] We are offering testimony today, in order to ensure that this body, and the general public understand how important it is to include cisgender and transgender girls, and non-binary youth of color within the group of people who need not only protection from harm, but true accountability when harm is caused.

Schools are the workplaces of young people. These institutions must be prepared to both prevent and respond to sexual violence. In this moment, schools are failing. **Last month, Legal Services of New York City filed a complaint on behalf of four girls of color, who were either raped or sexually harassed in their public schools.**

Another example, took place earlier this year, in Binghamton, New York, we witnessed the disdain with which Black girls are treated by adults who purport to help them learn. As many of you know, a group of middle school girls were humiliated by their teachers, accused of consuming substances, and then each instructed to remove their clothing, one article at a time,

[1] https://www.ggenyc.org/2018/06/the-me-too-movement-lives-at-girls-for-gender-equity-a-joint-letter/

for what essentially constitutes an unlawful strip search. The student who refused to get down into her underwear, was punished with suspension. It was because of the incredible advocacy of these student's families, local activists, including the local chapter of the NAACP, that we came to know of this horrific incident. Let me be clear - this was not an isolated incident. The conditions that contributed to this reality are the same conditions that contribute to harmful experiences that so many young people - especially Black girls - experience in schools, day in and day out.

In 2016, GGE launched a participatory action research process where over one hundred young people were able to identify key barriers to their ability to attend schools that were safe, supportive, and effective. **The findings resulted in our report, *The School Girls Deserve*, revealing that 1 in 3 students in New York City public schools experiences some form of sexual harassment.[2] In our research, a student reported being catcalled in the hallway as early as elementary school.** This student shared that they did not feel comfortable reporting it to any adult. Attending school everyday where students - and adults - make comments about a young person's body - and in many cases subject them to discipline because of what they wear or how a particular article of clothing appears on their body - is not only humiliating, but it can have lasting effects on the education for young people.

Education advocates often discuss what is commonly known as the "School-to-Prison Pipeline." This framing is helpful, but does not fully capture the experiences of girls and non-binary youth of color. We instead use the term "pushout," coined by scholar Dr. Monique Morris to characterize the ways that girls and non-binary youth end up leaving school before graduation. While they may not always enter the juvenile or criminal legal systems, they often lose out on educational opportunities because of system failures, including school-based sexual harassment. It is important that this body begin to understand sexual violence within schools as a contributor to low graduation rates.

If this state wishes to ensure that all students have the opportunity to meet their full educational potential, we must remove the systemic barriers that specifically harm girls and non-binary youth, especially sexual harassment and assault, and replace them with preventative measures. **Prevention work done in schools, can be the work that transforms our culture and prevents sexual harassment in the workplace and within our communities.**

We have this conversation about sexual harassment in New York as the federal government threatens to roll back the well-established, bipartisan, and necessary protections for students who

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2 https://www.ggenyc.org/wp-content/uploads/2017/11/GGE_school_girls_deserveDRAFT6FINALWEB.pdf

experience sexual harassment in schools. Without the federal government's protection created by Title IX, it will be very difficult to hold school districts responsible for fostering safe and supportive environments. We want to ensure that schools do not build a practice of trying to put out fires in order to protect themselves from reputational damage, without doing the much needed work of preventing harassment so that no student has to experience the pain and educational harm of experiencing harassment.

In addition, it is imperative that structures are put in place to counter the potential changes happening at the federal level, in particular, students feeling safe to report sexual harassment to any adult within their school. In our *School Girls Deserve* report, we found that 97 percent of the students who shared that they experienced some form of sexual harassment, did not report the harassment. This means that students are forced to endure what sometimes amounts to, immense, daily trauma, without being equipped with the resources, counseling or services necessary to recovery and heal.

Today we are calling on New York to implement the following:

1. **Expanding Title IX Protections** beyond the federal requirements at all institutions receiving federal funding, including both K-12 schools and college campuses and expand the number of full-time Title IX Coordinators at school districts across New York State.
2. **Comprehensive, age-appropriate, medically accurate sexual health education** inclusive of consent, LGBTQ identities and the full spectrum of healthcare options, every grade, every year, in every school across New York State
3. **Implementing culturally responsive education** at all grade levels in New York schools so that teachers are prepared to educate students across their identities, and so that students receive an education that reflects their histories and lived experiences.
4. **Reducing racially biased discipline with attention to girls of color and gender non-conforming youth** including the creation of a model dress code for school districts across New York State that celebrates cultural diversity, body diversity and gender expression.
5. **Reducing youth interaction with police and School Safety Agents.** Removing police from schools, should be our ultimate goal. Youth from GGE programs have reported being harassed by school police, who wield great power within schools and communities and have been reported.
6. **Expand the scope of the State Division on Human Rights** to ensure additional protections.

If New York wants to end sexual harassment, this starting with these measures are a bare minimum.

We are grateful for the opportunity to present in front of this body, and for your commitment to addressing these issues. We look forward to continued conversations about tangible solutions to protect young people from sexual harassment.

ABOUT GIRLS FOR GENDER EQUITY: Girls for Gender Equity (GGE) is an intergenerational organization that centering the experiences of young women of color and LGBTQ/GNC youth of color. Through direct services, organizing and culture change work, GGE works to ensure that the voices of youth of color and especially cis and trans Black girls and GNC youth from low-income communities, will be heard and respected.

Girls for Gender Equity Testimony
New York State Legislature Joint Hearing
Sexual Harassment in the Workplace
Delivered by: Kylynn Grier
May 24, 2019

My name is Kylynn Grier and I am the Policy Manager at Girls for Gender Equity (GGE), an organization challenging structural forces that work to obstruct the freedom, full expression, and rights of girls, transgender, and gender non-conforming (TGNC) youth of color. We work daily with young women and TGNC youth of color who are policed at every juncture of their lives, on the way to school by NYPD officers, in school by NYPD School Safety Agents, and while accessing City services as seen with Jazmin Headley at the New York City Department of Social Services. Young women and TGNC young people are criminalized for normal adolescent behavior, often times hyper-sexualized due to historically located racialized and gender-based stereotypes, and their bodies are regularly policed because of their race, ethnicity, sexual orientation, gender identity and/or gender expression.

Three shocking revelations of police misconduct have served as a tipping point for policy change that organizations have been advancing for years. Earlier this year, Buzzfeed News exposed that hundreds of officers were allowed to keep their jobs after committing egregious, fireable offenses. These offenses included lying under oath to grand juries and District Attorneys, lying on official reports, physically attacking innocent people, engaging in excessive force, and committing sexual misconduct against members of the public.[1] Then, two scathing reports emerged of the then 18-year-old teenaged girl under the alias, Anna Chambers who was handcuffed and raped and sexually assaulted in the back of a police van in Brooklyn, New York and who is one of many survivors of police sexual violence against community members in and out of schools across New York State. Shortly thereafter, there was shock and outrage as the nation heard about the treatment of Jazmin Headley, a 23-year-old mother whose baby was ripped from her arms by the New York City Department of Social Services and the New York Police Department.[2]

These experiences and narratives are often unheard in mainstream media, in conversations about policing, or in conversations seeking to address gender-based violence. This silence exists

[1] Secret NYPD Files: Officers Can Lie In Court Or Brutally Beat People And Still Keep Their Jobs https://www.buzzfeed.com/kendalltaggart/secret-nypd-files-hundreds-of-officers-committed-serious?utm_term=.peKvdj6am#.nlW4BGl2O

[2] 'Appalling' Video Shows the Police Yanking 1-Year-Old From His Mother's Arms https://www.nytimes.com/2018/12/09/nyregion/nypd-jazmine-headley-baby-video.html

alongside a multitude of systemic barriers to reporting, survivor supports, and often victim-blaming and criminalization of survivors. This is absolutely and unequivocally rooted in racialized and gender-based discrimination. For these reasons, Girls for Gender Equity and partners call on the New York State Legislature to pass the Safer New York Act.

Included in this package is a full repeal of Civil Rights Law 50-a which is consistent with those goals by providing essential transparency police abuses experienced by women, gender non-conforming (GNC) people and all New Yorkers. We look to partner with you and support your leadership to pass a full repeal of this law. A repeal of CRL 50-a would follow progress made in New York City to increase transparency, an important step on the road to safer communities.

As organizations that serve and advocate on behalf of women and girls, many of whom are survivors of gender-based violence, we know that acts of gender-based violence are often patterned, manifested by extreme power differentials, and are very rarely isolated incidents. These power differentials are especially exacerbated in police and community interactions with a gun carrying officer and added layers of an agency culture that has not been historically accountable or transparent.

WHY REPEAL: GENDERED & RACIALIZED IMPACTS

When sexual assault happens at the hands of the police and there is no transparency around discipline and accountability, sexual violence goes under reported overall. Survivors are left without a trusted and transparent mechanism to seek justice, no matter the perpetrator. According to the National Intimate Partner and Sexual Violence Survey, 1 in 3 women and 1 in 9 men are victims of sexual violence in their lifetime with higher rates of sexual violence experienced amongst Black women.[3] The overwhelming majority of experiences of sexual violence occurred amongst young people with 81.3% women-identified survivors and 65.6% male-identified survivors respectively experiencing sexual violence at age 24 or younger.[4] In 2016, 76.8% of sexual violence was not reported to the police.[5] Taken together, we understand that many survivors are young people, that rates are extremely prevalent, and that sexual and gender-based violence is patterned and rooted in extreme power differentials.

[3] The Status of Black Women in the United States (June 2017)
https://iwpr.org/wp-content/uploads/2017/06/The-Status-of-Black-Women-6.26.17.pdf
[4] National Intimate Partner and Sexual Violence Survey (November 2018)
https://www.cdc.gov/violenceprevention/pdf/2015data-brief508.pdf
[5] Criminal Victimization, 2016 https://www.bjs.gov/content/pub/pdf/cv16re.pdf

Even though sexual assault and gender-based violence is drastically underreported, a CATO Institute study of incidents reported shows that sexual misconduct is the second most frequently occurring form of police misconduct after use of force.[6] As of February 14, 2018, the New York City Civilian Complaint Review Board or CCRB, a New York City's police oversight agency, adopted a policy to expand the agency's purview to include incidents of sexual harassment by NYPD officers against members of the public.[7] According to the CCRB, 117 complaints were received in a short 15 month period that included allegations, from catcalls and sexual propositions to unwanted touching and rape.[8] Through this thorough quantitative data and the personal experiences of our members, followers, and/or staff, our organization's understand that there are rampant cases of police sexual misconduct against community members that continues to be shielded by a veil of silence and non-transparency from police agencies across New York State. As reported by the New York Times, women experience gender-specific forms of humiliation and abuse during such stops, including feeling "violated," "embarrass[ed]" and "sexually intimidate[ed]."[9] It is imperative that police personnel records be made available to survivors of police sexual misconduct to better understand any history of harm that has been perpetrated by an officer.

As the CCRB expands purview over complaints of all police misconduct - including sexual misconduct - it does not go far enough. The current interpretation of CRL 50-a limits the actual impact that this local policy change may have in that it prevents the disclosure of Civilian Complaint Review Board records to survivors regarding whether police officers have been accused of misconduct, whether those accusations have been substantiated, and even whether officers have been penalized for substantiated misconduct.[10] Repeal of NYS Civil Rights Law 50-a: A2531-O'Donnell/S3695-Bailey would be a significant step in ensuring that officers who repeatedly harm community members across New York State are held accountable and the full repeal of the law is necessary to true community safety.

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[6] CATO Institute 2010 Annual Report
https://www.policemisconduct.net/statistics/2010-annual-report/#Sexual_Misconduct
[7] Memorandum Accompanying Public Vote re: Sexual Misconduct Allegations
https://www1.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/20181402_boardmtg_sexualmisconduct_memo.pdf
[8] *Ibid.*
[9] Wendy Ruderman, For Women in Street Stops: Deeper Humiliation, New York Times, August 7, 2012
https://www.nytimes.com/2012/08/07/nyregion/for-women-in-street-stops-deeper-humiliation.html
[10] New York City Bar, Report on Legislation by the Civil Rights Committee and the Criminal Courts Committee, re A. 3333, p. 7, April 2018

NATIONAL DOMESTIC WORKERS ALLIANCE

To: New York State Senate Committees on Investigations and Government Operations, Ethics and Governance, and Women's Issues, the Assembly Committees on Governmental Operations and Labor, and Assembly Task Force on Women's Issues

From: Marrisa Senteno, Enforcement Program Manager (on behalf of the National Domestic Workers Alliance New York Chapter)

Re: Testimony Submitted for New York State Joint Senate and Assembly Public Hearing on Sexual Harassment in the Workplace

Date: 5/24/19

I. Background: About the National Domestic Workers Alliance (NDWA)

The National Domestic Workers Alliance (NDWA) is the nation's leading voice for dignity and fairness for the millions of domestic workers in the United States. Founded in 2007, NDWA works for the respect, recognition and inclusion in labor protections for domestic workers, most of whom are women. The alliance is powered by 60 affiliate organizations, plus our local chapters in Atlanta, Durham, Seattle and New York City, of over 35,000 nannies, housekeepers and direct care workers in 36 cities and 17 states.

NDWA leads several campaigns and coalitions to advance the rights of domestic workers by advocating for increased labor protections, racial justice, gender equity and humane immigration policies.

II. New York Domestic Workers win a Bill of Rights

The NYS Domestic Worker Bill of Rights was signed into law on August 31, 2010, marking the culmination of a six-year grassroots organizing campaign led by Domestic Workers United and the New York Domestic Workers Justice Coalition. The first legislation of its kind, the Bill of Rights closed gaps in labor laws that had left domestic workers with fewer rights than other workers in the state, and added new protections. It has inspired a national movement and Hawaii, California, Massachusetts, Oregon, Connecticut, Nevada and Illinois have also passed new protections for domestic workers in the past 8 years. The NY Bill of Rights includes domestic workers in protections against harassment and discrimination by changing the previous law of protecting workers in places of employment from 4 or more to 1 or more employees. This is key since most domestic workers are the only employees in the household and were previously excluded from harassment and discrimination protections.

III. NDWA New York Organizing Team's current role in helping to enforce domestic worker rights

In the past 5 years, NDWA has worked with our local affiliates to explore the following strategies in pursuit of a more worker-led, community supported enforcement process.

1. Prioritize leadership development among domestic workers that prepares and utilizes them as key actors in supporting peers through the enforcement process. In 2015 we began to develop the Groundbreakers leadership program, in which cohorts of 4-6 worker leaders from different organizations and communities are trained in systematic worker outreach and as worker rights enforcement navigators. The latter training equips them with the knowledge and skills to facilitate community education workshops, issue spot & identify when workers have potential cases, complete full a pre-intake interview, and peer coach workers partaking in a legal clinic for the duration of their case. We have trained 24 Groundbreakers thus far.

2. Work collaboratively with government agencies who share values and vision alignment, to explore how to leverage our collective resources and mechanisms to increase our capacity to bolster enforcement as a system, and not just an instance. On the part of government agencies this could look like offering up agency-supported outreach efforts, research, public hearings and events, and ability to lend additional staff capacity or services provision.

In turn we strive to establish community-based organizations that work with domestic workers and employers are central to government enforcement processes. Our organizations provide invaluable expertise and skills and there is a formal role for us beyond outreach and joining government-led efforts. They are often the first and most complete support that a worker is able to encounter when coming forward with egregious violations such as sexual harassment. They need the best support possible to provide the best care for domestic workers in order to move forward with a claim and to support their needs while mitigating negative consequences as a result of filing claims.

We have had success in collaborating with the New York City's Division of Paid Care to produce 3 city wide domestic worker convenings. The last of which, was a regional convening hosting over 300 domestic workers and advocates from New York and New Jersey. These types of collaborations can help us spread the word to domestic workers of their protections unders anti-sexual harassment laws.

Work closely with the NY State Department of Labor to more effectively investigate domestic worker cases of workplace wage theft violations. Often wage theft is the first indicator that there are other workplace violations such as sexual harassment and discrimination. Yet because of the severe power differential between employer and employee and the isolated nature of domestic work, the way that cases are investigated and adjudicated effect whether a worker is able to divulge more serious violations such as sexual harassment. This collaboration includes extending the wage theft statute of limitations to 6 years for domestic workers, advocating for the enforcement of the wage theft prevention act for domestic workers, placing domestic worker cases with investigators who have extra experience working with domestic worker cases, and monitoring domestic worker cases for retaliation. These extra measures help to mitigate the often severely negative consequences of coming forward with a domestic worker claim.

We know that in working with domestic worker wage theft cases and other workplace violations that the barriers to being able to enforce basic labor rights are very high. Domestic workers are most often women of color, immigrant women, and many times heads of households who will endure a very great deal in order to provide for their families with very limited opportunities to connect with other workers to be able to inform themselves of their rights and strategies in leaving very exploitive workplace situations. We know that added care and support systems are needed when considering supporting domestic workers with sexual harassment claims.

3. Strengthening sector-specific knowledge, and protocol around deterring ICE from entering into workplaces to conduct arrests among government enforcement agency investigators is very important. Key to this is helping investigators understand and practice how to work with very vulnerable populations, and to gather and assess evidence in a fair way. This is of course in confluence with supporting workers to understand the enforcement process, having a realistic perception around timeline and expectations for follow-up, and ensuring the power differential between their employers and them are mitigated, or eliminated if possible during the investigation. This is of particular importance in enforcing anti-sexual harassment law in the workplace. There is no human resources department that a worker can turn to when filing a complaint of an offending employer.

4. Work towards developing metrics for measuring the progress in domestic worker rights enforcement efforts, and surfacing patterns in systemic violations and barriers to successful enforcement.

IV. What we are seeing on the ground as we organize around enforcement as it relates to sexual harassment

Even with these strategies in place, and continued collaboration with city, state, community based organizations and advocates, we are seeing that it still takes a very long time for workers to know whom to turn to and whom to trust. Domestic workers have a very hard time admitting that their workplace rights have been violated. They have an even harder time sharing accounts of sexual harassment, but continue living with the trauma and fear every day of their past experiences.
We are committed to a complete screening of potential workplace violations that includes sexual harassment violations in the workplace. It is not enough to wait for a worker to come forward, when we can be in the practice of asking in a culturally sensitive and supportive way of potential sexual harassment violations.

We are finding that when some workers have decided to come forward, they do so in relation to a different complaint of workplace violations. They use a lesser offence to test the waters of how well they can trust our support and process. For domestic workers it is almost never only a sexual harassment claim. That is the insult added to the injury.

Unfortunately, while a worker has several years (6 in New York State) to file a wage theft complaint, the statute of limitations runs out much sooner for a sexual harassment claim. One year is barely enough

time for a worker to build the stamina, support and understanding of her rights to come forward. Add that to the time required to distance herself from a job that can very well affect her ability to find another job, because of the culture of reference checking in domestic work. Include threat of retaliation, threats to immigration status, and threats to personal safety and we have workers who come forward several years after the fact. This needs to change. Domestic workers work under hyper vigilance and they know every step they make is being surveilled. Many are afraid to make phone calls to any agency because they fear being recorded. Others are held accountable for every action they make and have very little personal time to make phone calls seeking information or visits to a city agency or organization seeking help. There are ways city and state agencies can be more accessible to domestic workers who work long hours and odd schedules. The thought of taking time from work is paralyzing and in the eyes of the employer a punishable offense.
Now is the time to act towards more aggressive enforcement of domestic workers rights to prevent sexual harassment in the workplace.

As an organization representing thousand of domestic workers in NYC, we know firsthand how important it is to listen to the voices of sexual assault especially in the national conversation on sexual harassment.

V. **Barriers faced by Domestic Workers to stopping sexual harassment in the workplace:**

- Despite the enactment of New York BOR's that addresses sexual harassment and anti-discrimination protections, there are many workers that lack knowledge of their rights and protections under the law. Likewise, there are many employers that do not consider their home as a workplace, and thus, aren't aware of their obligations under the law.
- When domestic workers know about their rights, then the next challenge is getting them to file a complaint with the appropriate enforcement agency on a timely manner in order to meet the statute of limitations requirements, which typically is one year from the date of the last act of discrimination or harassment (note: absent the filing of an administrative complaint within the statute of limitation, a worker is precluded from filing a claim in state or federal court).
- There needs to be an ease of access to seek information and support to file claims because domestic workers have little to no free time to investigate and make appointments.
- In addition, domestic workers face a myriad of barriers that often dissuade them from filing altogether and enforcing their rights, such as retaliation, including due to immigration status, fear of losing job and not being able to support themselves and family, loss of housing if they are live-in's, being blacklisted and not being able to find other employment.
- Once they file, then the next challenge is navigating the adversarial process required by the administrative agencies charged with enforcing the protections, which may include:
    1. A deposition or the coming face to face with the harasser- employer during the investigation process (highly traumatic and intimidating);
    2. Difficulty in proving their cases because they work alone and have no witnesses or evidence; Agencies do not have the training to properly investigate and adjudicate domestic worker cases.

3. Must go through a long waiting period for agencies to process claims. Agencies are highly backlogged (it can be longer if a worker goes to court).
4. Even when a case is finalized or case has been investigated; it is unclear whether or not workers will get remedies as a result of the violations based on other constraints, including the agencies ability to enforce a settlement agreement and/or judgment based on the solvency of their employer's assets.

VI. Policy Solutions to remedy the barriers:

- Administrative advocacy staff at city and state enforcement agencies charged with enforcing the anti-discrimination/harassment laws to be trained on investigating and adjudicating DW's cases, including alternative investigatory strategies that minimize or curb retaliation. Measures should be taken to make filing, conducting interviews, and conducting mediations in ways that protect workers from retaliation in particular for extremely vulnerable workforces such as domestic workers.
- State funds for legal aid and advocacy organizations, including an expansion of enforcement by local, state and federal agencies that should partner with community organizations/worker centers to identify cases (do the preliminary investigation) and then file claims with the appropriate agencies.
- Worker leaders at the worker centers should be an equal partner with enforcement agencies in investigating claims and providing the worker support throughout the process.
- State funds should be allocated for social and housing services that must be provided to domestic workers to mitigate the barriers that dissuade them from asserting their workers' rights. Funding should also be allocated to address mental health trauma and mitigate psychological effects through counseling for victims of sexual harassment and abuse in the workplace.
- Agencies should partner with worker centers to conduct " Know your Rights" presentations and provide information to worker about their rights & protections, including filing administrative charges (complaints) requirements for both state and federal claims
- Legislate required work disclosure agreements that an employer provides to their domestic worker, which should spell-out worker rights protections, including the right to a healthy & safe work environment free from discrimination, wage theft, and compensation for prevailing wages.
- Revise current law to ensure coverage of domestic workers classified as "independent contractors" and/or who do not meet minimum hourly requirement, and ensure them basic protections like anti-harassment laws, minimum wage and meal break guarantees, and workers' compensation.
- Create a task force to explore the feasibility of establishing a statewide sectoral standards board for domestic workers that monitors and proactively sets standards for the domestic work industry.

VII. Domestic Worker Testimonies of Sexual Harassment in the Domestic Workplace

Initials have been used instead of full names to protect the privacy of the domestic worker members of NDWA.

M.T.G. - Worker Leader and housecleaner. Member of the National Domestic Workers Alliance 12/6/17

Mi nombre es M., he sido trabajadora del hogar por 8 años. La razón por la que estoy compartiendo mi experiencia es porque las voces de mujeres trabajadoras en sectores como el nuestro hasta el dia de hoy

no habían sido parte de la conversación y las barreras para hablar sobre este tema siempre han sido inmensas.

Quiero compartir una situación incómoda y un poco vergonzosa para mi. Hace unos años yo pase por un caso de acoso sexual. Yo limpiaba el departamento de un hombre soltero, un poco mayor, cada vez que iba a su casa él siempre estaba ahí, se sentaba y me observa mientras yo trabajaba y de alguna forma siempre encontraba la forma de rozar sus partes privadas en mi cuerpo. Algunas veces me insinuaba que le gustaría acostarse conmigo y llego al punto de enseñarme un condón y preguntarme si sabía usarlo. Todo el tiempo yo pretendía no entender lo que me decía ya que el habla ingles. Siempre me insistía en llevarme a mi casa después de hacer la limpieza pero yo me negaba. Una vez le acepte la oferta porque había surgido una emergencia en casa.

La situación se había puesto tan incomoda para mi, que un dia le comente a mi hermana sobre lo que estaba pasando en el trabajo y mi hermana me apoyó económicamente para que yo pudiera dejar el trabajo ya que soy madre soltera y soy la única que sostengo a mis hijos. Cuando yo le informe a el, que ya no trabajaría para el, se molesto demasiado. En varias ocasiones cuando regresaba a mi casa de mi nuevo trabajo, lo encontraba afuera de mi casa. Por el miedo que sentía por su acoso me tuve que mudar de casa. También porque sabía que si alguna vez yo llegara a pedir ayuda, la posibilidad de que me ayudaran iba a ser mínima ya que el es un policía, hubiera sido su palabra contra la mía. Lamentablemente no supe qué hacer ni con quien ir para pedir ayuda, caminaba con temor todo el tiempo, rogando jamás volver a verlo.

Espero que mi testimonio sirva para que estos casos sean vistos y para que las trabajadoras del hogar ya no seamos vulnerables a tanto acoso en el trabajo.

W. G. Worker leader and Nanny in New York City NY 11/19/18

I have been asked to share my story about sexual harassment in the workplace.

I was working in a private home as a nanny. This was part of a nanny share agreement in which I had two employers for the same position. In one of the families in the nanny share I had to put up with inappropriate behavior that I would now recognize as sexual harassment, during my employment with them.

Every morning the dad's routine was to shower. He also made a habit of exiting the bathroom in his towel and trying to have conversations with me while underdressed. He did not seem to care that I found this inappropriate; and I like many other women I stayed to keep my job. I actually thought after a while that I may have been overreacting. That is, until I found another position and realized this was completely inappropriate.

The father would linger after the wife had gone to work and take a shower in the hallway bathroom. The hallway bathroom was located closer to my work area as a nanny, all the while he had a full bath in his own bedroom. I tried not to think negatively until he came out in his boxers on the third day to "wipe the table." I knew it was not okay for him to act this way but I had to weigh how I was to react in order to not cause harm to my own position of employment.

I felt like it would be very detrimental for my family's well-being to take a loss knowing it would end up in the loss of the job so I tolerated it and eventually learned to avoid this behavior in certain ways.

I had to eventually had to leave the job with the nanny share employers because they also did not pay me overtime. They were lawyers and new how to manipulate the employment situation in a way that would make it very hard for me to speak up against their exploitative practices. The other nanny share employers were aware of the one father's inappropriate behavior and did not help to remedy the situation at all. I felt powerless against them and I didn't know how to assert myself at all or where to seek support against their abuses.

This is a very common behavior it seems in our industry; and if something as mild as this happened to me, then the rate at which this must be happening to my fellow domestic sisters has got to be staggering. This has to stop.

K. G. Domestic Worker Testimony given on 11/20/18

K. G. is a domestic worker as a full time nanny. In her previous job she was working 12 hour days. She worked 6 days a week. She was completely responsible for child under her charge. The mother worked outside of the home. The father was studying to become a law enforcement officer and at the time was doing this from the home. The inappropriate behaviors started with text messages while K. was off duty. The messages were prodding in nature and were not related to the child or her job responsibilities. K. thought that the messages did not make much sense but would respond one word answers only, or try to change the subject and respond about the child under her charge. She was trying to deflect the prodding tone of the text messages. Once he asked her out for lunch. She did not approve and she made an excuse as to why she could not go. She knew there was no professional need for the lunch and did not feel comfortable going. It escalated from there. Once she and the employer were home. The employer made sure they were alone and the employer tried to kiss her. She rejected his advance. She had to keep working without prospects of another job. The pay was so low and the hours so long, that she could not save money or take time to find another option of employment. Finally her job came to an end when they fired her and was told that she was no longer needed.

It took K. several months to come forward with her story. She was so concerned that she would not be believed in coming forward. The fear she feels prevents her filing a claim. She was afraid that she would be making a claim against a law enforcement officer. She stayed on this job for two years. She was also being robbed of her overtime wages and was paid severely under minimum wage. K. is very fearful of retaliation. She will not be able to move forward with her claim without a lawyer because of the position that the employers have in law enforcement. The hope is that Kelly can at least come forward with a wage theft claim and that it would not be as contentious or damaging to her employment prospects as a sexual harassment claim.

Reports

- Home Economics report, which shows that full spectrum and has some statistics on sexual assault and harassment.
  https://www.2016.domesticworkers.org/homeeconomics/

- I'm including this year's report on domestic and human trafficking, which is the most up to date survey of its kind.
  https://www.www.domesticworkers.org/status-black-women-united-states

- Finally, the Status of Black Women report has some significant data on care work and how it intersects with Black women's experiences.
  https://www.www.domesticworkers.org/status-black-women-united-states

For any questions, please contact: Marrisa Senteno Enforcement Program Manager at marrisa@domesticworkers.org, or Rocio Avila, NDWA State Policy Director at rocio@domesticworkers.org.

NATIONAL DOMESTIC WORKERS ALLIANCE

To: New York State Senate Committees on Investigations and Government Operations, Ethics and Governance, and Women's Issues, the Assembly Committees on Governmental Operations and Labor, and Assembly Task Force on Women's Issues

From: Daniela Contreras, New York Organizer, National Domestic Workers Alliance

Re: Testimony Submitted for New York State Joint Senate and Assembly Public Hearing on Sexual Harassment in the Workplace

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My name is Daniela Contreras. I am the New York Organizer at the National Domestic Workers Alliance - NDWA. I have worked for many years as a domestic worker, and my mother and sister are also domestic workers. I am the mother of a curious, intelligent, beautiful 6-year old daughter. I have been undocumented, and am a DREAMer. Today I am here to share my story of sexual harassment in the workplace and how this issue affects the sector in which I organize.

Domestic workers have faced a long history of exclusion from basic labor protections, rooted in the legacy of slavery in America. Domestic workers were specifically excluded from federal labor protections like minimum wage and the right to organize a union. Many laws such as anti-discrimination and harassment laws have also excluded domestic workers.
And domestic workers feel the consequences of that. They feel it as disrespect and lack of dignity in their work. They experience it as a wage theft and not having enough time off to take care of themselves and their loved ones. They feel unsafe in their jobs, unprotected by our laws.

When I was 16 years old I got a part-time job as a nanny, caring for a 3 year-old boy while his parents were at work. I took care of him every day after school for 3-4 hours. I was so excited because it meant helping my family financially. My mother at that time was working as a live-in domestic worker, staying with her employer 7 days a week and earning $125-150/week. My sister and I were living with my uncle at that time, and she had very little time to spend with us. Her situation was bad, so bringing additional income went a long way. I felt proud I was making

a contribution. At the same time nannying didn't feel like a traditional job. Caring for each other's children in my community is simply understood as helping each other out.

At the time I was an undocumented immigrant. I had been aware of my status since I was a child, and there were key barriers that made it difficult to get the help that I needed. In my community there is a lot of fear of seeking help from law enforcement when you are in trouble. I did not know where I could go at that time had something bad happened to me. And while I understood English, I did not feel I could express myself fully in this language at that time. The mother of the child spoke Spanish and interviewed me and provided me a work agreement, but the husband was a monolingual English speaker. My job required me to be alone with him at home often and this made me very uncomfortable.

To be honest I have never felt comfortable with men. When I was growing up in Mexico my father traveled a lot for work and wasn't around very much. And the interactions I did have with men did not lend to feeling I was safe with them. I remember one time as a child taking the public bus with my mom to school. The bus was crowded and she was standing somewhere on the other side. I realized a man was pulling up my uniform skirt, while touching his private parts. I froze, feeling shocked and paralyzed from fear. As soon as it was my stop I ran off the bus. I didn't mention anything to my mom, or anyone else. Sexual harassment in the workplace is often layered with other related experiences, and children and youth especially are vulnerable to sexual abuse.

At 16, the idea of being home with this father alone was uncomfortable to me, but I felt it was a job that my family needed me to have, and so I ignored this feeling. The father would come home from his construction job in the late afternoon, and he would go straight to shower. At first he would come out of the shower, and walk from the bathroom to his bedroom wrapped in his towel. But over time he started to call me from the bathroom to get a towel for him while he was in there naked. I would bring him a towel, and leave it at the door. On some days I would try to be proactive and leave a towel in the bathroom before he got home. But it continued to escalate where sometimes he walked out naked to his room.

One day he came out of the shower into the bedroom where I was playing with his child. He began to touch me and pulled me onto the bed, sexually assaulting me right in front of his child. I felt so vulnerable and defenseless. I froze in the way I did when I was child on the bus. He may have been saying things to me but I couldn't understand. Their apartment was on the first floor, and someone must have saw and began knocking on the window or door. It distracted him, and in the moment I got up, got my stuff, and immediately left.

It was one of the most terrifying experiences of my life. My employers never called me, and I never went back. I stopped speaking with the high school acquaintance who had connected me

with the job. And out of my fear and embarrassment, I kept silent for almost two decades. At that time, I kept wondering, "Why me?" and later on I began to wonder about other women who did the work I did but in houses that were significantly more isolated. What happens to those who go through what I went through but there no neighbors or stores next door? This was my first experience with sexual harassment in the workplace. But it wasn't my last.

I have also experienced agasexual harassment repeatedly working at a restaurant and deli. In the restaurant, the owner required the women employees to wear super tight clothes in the winter, and short skirts and low-cut shirts that revealed cleavage in the summer. He would specifically target me when he was around - requesting me to be the server, telling me he'd like to take me to dinner and then a hotel, and verbally abusing me when I ignored his behavior or turned him down.

My co-workers would say nothing, not even the other waitresses who experienced some of the same behaviors from him. I was the only waitress who stood up to him. They would shake their heads silently expressing "sorry, we can't do anything about this." It was worse when others would laugh, and make light of my situation. Across the restaurant the men often had power over the women in their positions, and also in our daily interactions. I remember dreading working those long weekend hours where I felt such indignity.

I did file a complaint against him in 2005. He hired a lawyer, and working with the manager put forward a counter story, accusing me of pursuing him. My case was thrown out. Later I saw the same lawyer who worked with him in response to my complaint was running for public office in Brooklyn. It angers me how unfair power dynamics worked against me, and so many women in this society.

I experienced similar behaviors by the deli owner's son, where I also worked. One day he called me into his office and told me he wanted to have sex with me. I was older by then, and the experiences from the experiences from before drove me to want to stop repeating the cycle. I told him no, that his behavior made me uncomfortable, and if done again I would report it to the Department of Labor. It scared him enough to stop his behavior, but that's not always the case in other situations. At that time I knew the Department of Labor enforced worker protections but I didn't know how to find their number or how to access their help. Everyone says go and take action, but it's difficult to know where to go, or how to go about reporting and actually changing the situation.

As an organizer, every day, I hear stories of working women just like me. I moderate several online domestic worker groups on social media. Recently I got a call from a housecleaner in Texas. She had gone for an interview, and after the employer drove her home and attempted to

rape her. When she was leaving his car he threatened her that if she ever mentioned anything he would come after her - now knowing where she lived and having information about her personal life from the fake work interview. She called me crying. We had a deep conversation about what happened and immediately I connected her with Fuerza de Valle, an NDWA member affiliate organization in Texas to support her with social and legal services. Another housecleaner shared that she asked an employer to bring 2 other cleaners with her to a first interview, and the employer immediately stopped calling. Domestic workers have no way of knowing beforehand how safe their workplace is before they are there. They have no one around often to witness their experience or offer them support and protection.

Many domestic workers are immigrant women and American-born women of color. Their families and communities are constantly targeted, separated, treated with violence. Our stories can be full of pain, fear, silence and shame. When I have posted videos and articles about my firsthand experience of sexual harassment in the workplace to the online domestic worker groups, there is often little to no response compared to other postings. Our communities still struggle to talk about this issue openly.

I believe through our organizing we can change this. NDWA's organizing made it possible for me to share my story, raise my voice. It has given me courage to work towards collective solutions that include passing stronger legal protections and also rights enforcement processes, and designing creative strategies that address the unique issues in our industry, including

- Legislating more serious consequences for perpetrators of workplace sexual harassment
- Providing more comprehensive follow-up and peer-led support to domestic workers who come forward, ensuring they see their cases progres in a timely manner
- Creating ways for domestic workers to share with each other notice of employers who have sexual harassed them, or violated their rights so these bad actors cannot repeat their employment practices and behaviors with other workers

We are building a movement and making a new world possible. I need this new world to be one that my daughter can grow up safely, happy, and free in. That's what she deserves, that's what we all deserve.

TO: JOINT SENATE & ASSEMBLY HEARING ON SEXUAL HARASSMENT
250 BROADWAY, ROOM 1923 – 19TH FLOOR
NY, NY 10007
FROM: Cynthia T. Lowney, Esq.
RE: Public hearing testimony
DATE: MAY 24, 2019

Good afternoon, Senators, Assembly members, staffers and all. Thank you for holding/attending this joint NYS Senate and Assembly public hearing to examine sexual harassment in the workplace. I believe that BOTH the definition and venues should be extended/broadened. Sexual should include gender and racial harassment and workplace should include interviews, social and/or work-related events, volunteer work, etc. Hostile work environments need to be eradicated by the compliance and enforcement of rules, regulations and laws already in existence in a timely manner and refined via updates when necessary.

DEFINITIONS
Sexual harassment can be defined in a myriad of ways. The usual definitions include unwelcome and/or inappropriate sexual remarks or physical advances in a workplace or other professional or social situations. It includes making offensive remarks about women in general as well as offensive suggestions &/or photos, giving gifts of a sexual nature, repeatedly asking another to socialize when given a negative response (especially via a superior), verbal abuse of a sexual nature, touching, grabbing, repeatedly too close or bushing up against a person by a superior (even one from another area/unit), a co-worker, a client or customer, sexual pranks, teasing, singing love songs, telling offensive jokes of a sexual nature, innuendos – in person, via e-mail, phone, other social media. People need to know the definition and that is precisely why education and training are imperative & not just in the workplace! Unwelcome conduct unreasonably interferes and/or intimidates one as to work performance and can create an unhealthy, hostile or abusive work environment. Giving promotions, awards, training or other job benefits upon another who reluctantly accepts unwelcome activity of a sexual nature is wrong! N.B. The harasser can be of the same gender, race or religion!

EDUCATION
One needs to know the definition of sexual harassment (which I believe needs to be expanded to gender, racial and religious harassment so that others can better understand the entire components). We must expand the definition and acknowledge a behavior, give it a name that people know, understand and accept as egregiously wrong (i.e., NOT, "Oh, what a nice outfit you are wearing" or, "You look great today" – without added actions or motions).

False accusations are yet another problem that must be addressed. Because of a lack of education on topics or a misunderstanding, one might file a complaint that is inappropriate or false. The target can also have long-lasting negative effects as to his/her career. When so few know what it is, how can businesses, organizations and government entities instill effective policies? Similarly, without education, how would parents, relatives, teachers, coaches, mentors, neighbors & all know what could and/or should be done/reported?

WHY DON'T PEOPLE SPEAK OUT?
Those who are aggrieved keep silent for fear of retaliation (firing, "being blackballed" as Anita Hill said in 1991 when asked whey she had not come forward about the sexual harassment towards her via Clarence Thomas when she was subpoenaed for testimony during his U.S. Supreme Court hearing) or some other kind of subliminal repercussions (i.e., being labeled as a "rat", "snitch", failing to adhere to the "boys' club" mantra or being denied promotions). For sure, Professor Anita Hill was criticized and her career, while successful in some ways, was negatively affected while Clarence Thomas is STILL a U.S. Supreme Court Judge!

Former NYS Governor Mario Cuomo had an Executive Order issued in the early 1990s that forbid NYS employees from acting, ignoring, encouraging, condoning, excusing sexual harassment. That Executive Order did not curtail the rampant gender and racial discrimination that persisted in the NYS Department of Labor.

My specific reason for submitting this testimony is because after I heard Professor Anita Hill's testimony in 1991, I was a NYS Department of Labor (NYS DOL) Administrative Law Judge (ALJ) in Brooklyn, New York. I was one of 21 Administrative Law Judges hired in 1991-1992 because the NYS DOL was required to hire women and minorities since over 90% of the ALJ positions were given to white males. From the onset, the instances of gender, racial and sexual harassment and discrimination were rampant. When we attended a training session in Albany, New York in December, 1991, it was the first time we ALJs had social interaction after the daytime courses. It was then that we realized the illegal behavior was beyond outrageous as there was a "hospitality room" (a bedroom converted to an opportunity to have liquor and speak with other ALJs, including supervisors and the Executive Director. Within moments, we witnessed one of only 3 female ALJs hired prior to our hiring, kissing a few supervisory judges and posing for photos with them. Most of we "newer" ALJs left quietly without saying anything to those who remained; we then began to relay what other gender, racial and religious harassment and discrimination had occurred to us in our isolated cubicles. Because most of us had a 30 minute lunch period and had to travel from under the Brooklyn Bridge on a van to downtown Brooklyn to obtain our lunch, our conversations were extremely limited since we wrote appellate decisions (I had public contact because I was one of two new ALJs chosen to do special hearings since I had been an ALJ at another NYS entity). When we arrived back at work the following workday, we were shocked and dismayed to see the photos of the female ALJ and the supervisors kissing her posted by our main mailboxes. Subsequently, armed with knowledge that there was a serious problem, we contacted our union, the Public Employees Federation and spoke with our representative. All of we new hires were "provisional" and the NYS DOL would not give a test; ergo, most were afraid to file a grievance or complaint. Fear of losing a job was prominent; however, without Civil Service protection and on probation even if hired via a test, allowed these few white males in powerful positions to persist with their antics of harassment and/or discrimination in what we later learned was their way to encourage us to LEAVE on our own. When a few of us contacted the Employee Assistance Program and/or the Office of Equal Opportunity (OEO), an explosion of interrogations and retaliation occurred. The EAP counselor I consulted violated my privacy by reporting what I said to the OEO office without asking for my permission or telling me she did so. Another ALJ went to OEO about racial and gender discrimination against her. When the Chief ALJ got a message from OEO that a female ALJ had complained and he wanted to talk to him, I WAS CALLED INTO HIS OFFICE (because he assumed I went to OEO) and interrogated for over an hour without a witness- while he had had a witness. When I asked for union representation, he told me that if I left his office, he would write me up for insubordination. While I filed a PEF grievance about unfair and unequal treatment and won $1000, the rampant treatment and retaliation I suffered was outrageous. On one occasion, the Chief ALJ & Executive Director insisted I stay after work for them to review 25 of my cases at once (the norm was for a Sr. ALJ to review one at a time and simply send back recommended changes). Before my one year anniversary at the job and without one formal review of my work, I was terminated along with the minority female. IT WAS BLATANT RETALIATION and was a message to all others that if they dared to report anything, they, too, would lose their positions. N.B. Even though I won the grievance, the DOL never investigated my complaint that violated the PEF contract.

Both the other ALJ and I filed outside complaints of harassment, discrimination and/or retaliation. I filed my complaint with the U.S. EEOC because I did not want a NYS entity reviewing a sister/brother unit. Unfortunately, the EEOC transferred my case to the NYS Division of Human Rights (SDHR), without consulting me or obtaining my permission, because the EEOC's backlog was 10 years in 1992. I contacted our family friend, Senator John Marchi (who was able to have our immediate termination letter revised to include two weeks' notice), the Governor's office and his Governor's Office of Employee Relations (GOER); however, while Senator Marchi's office had intended to assist us more vigorously, he was hospitalized to undergo emergency surgery. A NYS DOL attorney from Buffalo interviewed me in the summer of 1992 and recommended that I be reinstated; however, the Chief Judge did not take that recommendation.

After months of no job prospects as an attorney, I was hired by the PEF Regional Director, Bob Jackson (now, NYS Senator) to fill in as a union rep for a woman on maternity leave. A PEF union grievance was filed on behalf of other ALJs (since none would dare sign their name on it for fear of termination) and when the test was given, both the other ALJ who was terminated and I scored 100% and were ranked #1 – but #27, a white male was hired.

Because I was a single mother of two, unable to obtain a position with sufficient income, I had to cash in any pension monies I had in NYS's retirement system (I had an Income Execution Order for child support because of non-compliance after a divorce –but it was unenforceable since I was unable to hire a person to determine the whereabouts of my two children's father after he left NYS). My financial woes continued because of the NYS SDHR's backlog, their move to another location and letters to NOT contact them because they were busy doing other cases.

MY PROBABLE CAUSE HEARING was in 1996 – along with the other ALJ who was terminated the same day as me. I won my hearing and the DOL appealed; I won the appeal which meant that I would be entitled to a public hearing or could proceed in federal court. I could not afford a substantial retainer for a private attorney and no Not-for-profit would take my case; ergo, I had to rely on the SDHR. I never had a public hearing for several more years!! All that while, I took "survival jobs" and often that meant 2 or 3 jobs, including many without medical, dental, prescription, optical benefits or vacation, sick or personal days and some with minimum wage salaries. At the same time, I had to HOPE for a hearing, but instead attended various "conferences" on little notice to my employers for a day off work (often without pay because the positions were temporary, provisional, 1099 or seasonal) and travel to SDHR offices in Harlem, Hauppauge, Brooklyn and the Bronx. Neither the attorney for DOL nor the attorney for SDHR considered my loss of work every time they postponed, failed to produce documents or were unprepared. Even presiding ALJ demands that the DOL be prepared and show up with files was ignored! N.B. Most corporations, not-for-profits and others enter into negotiations to expedite all and reduce legal fees, costs. Government entities often do not consider costs & since attorneys who handle the cases do not suffer customers if they lose or get a raise if they win, the incentive to work earnestly sometimes lands in the laps of those who agree to serial adjournments by their adversaries. Accountability as to timelines/efficiencies was not a priority; in fact, I never met the General Counsel or Commissioner over my entire experience.

My public hearing took 38 days over 18 months; both the DOL & SDHR attorneys were required to file briefs; neither of them ever filed a brief. The SDHR attorney failed to file a brief after several months of extensions and work by me; she notified both the ALJ who presided over the hearing and me the Friday before the brief was due on that following Monday; ergo, I put together a brief HOPING the ALJ would accept it. The DOL attorney who was at the hearing left the DOL; another attorney, not familiar with the case, allegedly filed a brief – but I did not see it.

FIFTEEN YEARS (15) after I filed my 1996 complaint, I received a WINNING RECOMMENDATION – for back pay (minus what I did make PLUS 9% interest, $50,000 in compensatory damages) and immediate reinstatement. BOTH the DOL and (shockingly) the SDHR objected to my win. I anticipated that the DOL would object; however, it was beyond astonishing that the SDHR objected since the attorney had not been prepared, I did almost all of the questions for the various witnesses whose names I gave to her & had to XEROX all for her when she received papers from DOL at a hearing (while she got her lunch). Apparently, her boss, the General Counsel, Gina Lopez-Summa, was undergoing NYS Senate confirmation to become a NYS Court of Claims Judge and the award as given would have publicly exposed how much inefficiency by the SDHR under her supervision had caused not only a complainant egregious harm, stress, etc. but also costs taxpayers outrageous amounts of money.

A new Commissioner was appointed and that meant more delays; Gina Lopez-Summa was approved by the NYS Senate and the new Commissioner handed me a DECISION & ORDER that included $100,000 in compensatory damages and only 1 year of back pay plus interest because my job had been a provisional one. She did not consider that I took, passed and scored #1 on a Civil Service exam and was never interviewed or hired and that an Associate Commissioner at the NYS DOL testified that they skipped over several of the terminated judges because the "thought" they could do so.

Bottom line: after an appeal, I got $0 because the NYS DOL hired outside counsel and filed two affidavits: 1) that the person who accepted service from my process server (with me by his side) was not authorized to accept the papers; and 2) that the ONLY place to serve legal papers was in Albany as indicated by an internal memo (albeit, not available to the public).

SUGGESTIONS & RECOMMENDATIONS

1. Expand the definition of sexual harassment to include gender, racial and religious harassment and discrimination.
2. Mandate education beginning in elementary and high schools with resources and teachers who are well-trained in those areas because workplace harassment/discrimination is the result of one's environment (i.e., home, family, school, neighborhood, religious, social and ethic background – plus TV, social media, etc.). For sure,
   the "double-checkmark" of hiring only those who fit two categories of
   under-represented groups eliminates hiring those of certain genders, ethnic, religious and/or racial backgrounds who need to find others with whom they have trust, can confide, etc.
3. Provide training/education for parents, families, workers who may not be cognizant of their own prejudices, behavior and its effect on others. We must go to the sources- the roots of the problem.
4. The current rules, regulations & law must be complied with and enforced TIMELY by NOT just corporations (who often settle with non-disclosure agreements-thereby allowing the predators to remain in their jobs while the person reporting is given monies and may not realize that explaining why they left a position is, in essence, NOT true when an employer agrees to the "reason for leaving" as something other than the egregious behavior OR that their career is ruined because they did report) – but also via government entities, not-for-profits, per diems, household workers, store clerks, waiters/waitresses, actors/actresses, tutors, coaches and more. JUSTICE DELAYED IS JUSTICE DENIED!
5. DISCUSSING THE ISSUE GOES BACK CENTURIES. Professor Anita Hill, U.S. Supreme Court Ruth Bader Ginsburg, the Women's Rights Movement in the 1960s and the "ME TOO Movement" have instilled HOPE that women would be treated equal and with dignity – NOT harassment and discrimination. Women had their hopes up when they fought for the right to vote, the right to own property, to make their own medical decision without their husband's signature, to attend military, medical, law and business schools without prejudice against them, to enter predominately male fields as firefighters, police, pilots, FBI, judge, electrician, plumber, rabbi, minister, priest & more & to be promoted to levels consistent with those of men with equal pay for positions given to men with equal education or experience. The norm has been, and STILL is, in many arenas that women and minorities must have superior credentials to attain positions and salaries that are equal to that of white males. Neither NYS nor NYC has had a female governor or mayor; no female has been elected as a US President; however, African-American men have ~~both~~ all attained all of those positions. Weekend news is headed by a plethora of women and minority hosts; only recently have women and minorities have appeared more frequently. Women have, and still do, put up with LOTS. Hillary Rodham Clinton was considered "too old" to be the President of the United States; Bernie Sanders and Donald Trump were are OLDER! Many, even women, do NOT see through the eyes of harassment and discrimination.
6. Hearings & legislation are two initial steps. The MOMENTUM must continue through education/training, compliance and enforcement in a TIMELY manner if all are serious about eradicating harassment & discrimination. JUSTICE DELAYED IS JUSTICE DENIED!

Good morning ,my name is Marie Guerrera Tooker and I am a victim of the Suffolk Crime family .

Harassment comes in many forms ,but the most horrific nightmare of torment is the hidden ones ,the hidden sexual comments ,the hidden groping ,the hidden kiss ,the hidden terror to shut you up when you whistle blow on them .Like Senator Graham said when they want to silence you they kill your cat or puncture your tire .

With harassment they do more than that they degrade you to a level where you become dysfunctional. Men instill fear in you, belittle you so you are so beaten down ,you just want to crawl under a rock and hope it stops .Reality is it never stops when you are a strong mother like me who is a threat to the establishment . Harassment continues until you are so broken you just cannot get back up. We are in such a state of fear to lose our children and home we bow down to the abuser and he gets away to abuse the next victim.

It is not always just one man harassing you or asking you for a date or making sexual moves on you, many times it is more than one.

For instance when the police are called to your home and instead of them helping you ,there making fun of you making sexual remarks to a level you just give up ,while the police are protecting the person you are calling for help from .You are so beaten down the crimes against you are diminished and the women is usually in more danger ,because it becomes known to the world she has no protection .

Today I am forever grateful that the tide is changing, and this new administration is finally putting there foot down and protecting women.

Let's face it God made women beautiful, and men sometimes just cannot help themselves. I would have to say by experience most women in their lifetime have been harassed more than once, and they usually just deal with it at that moment.

The word harassment is not strong enough to describe the hidden terror that , everyday women, single mommies, drug addicted women and women who are at their lowest who are abused by the system especially by law enforcement and judges .Its men out there that have a political agender to degrade you to gain power and get benefits from harassing women , like stealing your children, or stealing your home, or allowing to continue to sell drugs and traffic women .

These men who are protected by the corruption that has plagued our country are out of control and need to be prosecuted to the fullest, to send a message that women must be protected from the bully.

Local police would solicit prostitution and make a drug addict woman in the streets give him a blow job to get off an arrest. The police would than take the drugs from the prostitute and sell them. The cop got sexual aroused and then made money. This is one example of the hidden evil that women suffer in the hands of silent harassment.

In todays world sexuality is exploited, unbridled, seductive and considered glamourous, in the media are more predominant than ever in history.

In the olden day's women did not have fake nails or cosmetic surgery. Women were just natural, working hard to survive, milking a cow or planting corn. Women were so discriminated against throughout history and are still not fully protected today.

Although Women have come along way. There are categories of women under the new laws who are still not protected.

Workplace needs to be changed to anywhere women are harassed. Sexual harassment needs to be changed to any form of degrading a woman especially when it happens from law enforcement or judges. Without hesitation Judges if they harass a woman need to be impeached.

I want to speak on behalf of what I witnessed with women especially the ones who cannot speak for themselves because they died.

Her name was Danielle who I met in the dark in my driveway on property I owned that was under siege by drug dealers and prostitution fully protected by law enforcement.

I asked her what she was doing in my driveway and she started crying, she told me she had two sons and had to leave them and her home because her husband was abusing her and had protection by someone powerful .She became a drug addict and lived in the streets and serviced the police to survive .

How does a mommy lose her two sons walk the streets homeless in today's world? Why because law enforcement and the court system protected the abusive man.

I believe Danielle was killed in the streets with a hot shot by the police because, she was giving me evidence, and telling on powerful people.

Other women who came to me for help Bianca. who overdosed and died. She too was giving me evidence of law enforcement selling drugs and running the prostitution ring on the east end of Long Island. Five days before she died, she reached out to me and was afraid for her life. I could not save her, because the men were to powerful and I had no where to go to help her, because it was the local authorities that were involved.

The workplace is not always in a building, it could be in a hay field, on a farm or in the police station or right in a court room filled with men before a sadistic Judge.

A theatrical play where the script has been written way before you get to the podium. These judges and attorneys already colluded and marked you to be a target of their sick sadistic actions of terrorizing women, so they can steal your children and home. Our God given rights have been plagued with corruption on every level of gov't and completely ignored by society

Congratulations to all who were elected during 100-year anniversary of women's rights. I pray to God that you protect all women and bring hope to the women who are still suffering, oppressed and change the laws to add the hidden harassment to the targeted women that are abused in their own back yard in the police department ,or in the court room .

In my experience when a sick sadistic judge wants to punish you and steal 134 acre farm ,that was slated for a philanthropic endeavor to protect children and veterans , they abuse you and degrade you ,instill fear in you ,to shut you up so you cannot defend yourself in a court of law .

When the act is so horrific the average person cannot believe that a federal Judge, like Judge Grossman can be so sadistic and say in a room filled with men. Take your sweater off for a second and hangout.

We all know what a second is, and hangout means to protrude, stick out. No women should ever experience this kind of harassment by a judge, leaving her no protection as he degrades you as a woman using his powerful position to instill fear in you, and shut you up, so you cannot defend yourself.

Women need to be protected from men in power and Judge Grossman needs to be impeached immediately. I was lucky this abuse is on audio, many women like me will never get protected because it is covered up by other judges and law enforcement.

So, my question to this committee is who will sponsor a petition of Remonstrance to have judges impeached if the sexually harass a woman in a court of law?

And to change the laws to protect women from men with powerful positions who have immunity?

Thank you so much for allowing me to speak today on behalf of all women who suffer in the hands of powerful me who are protected by our corrupt system and I hope and pray the laws are changed to protect us and the future of women's rights so men like judge Grossman lose their powerful position and never hurt mommies like me again .

Marie Guerrera Tooker
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May 24, 2019

Good afternoon. My name is Christine Reardon. I began my career at the MTA-LIRR in 1983 and worked there for 27+ years in various positions, including the Manager of Benefits Administration. In 2005, I opted to exercise my seniority, passed qualification exams over a one year period, and became a crew dispatcher. I opted to make this career move due to the pressure I was under as a manager, the inflexibility of my managerial schedule, and to better facilitate the IVF process my husband, Dennis, and I were involved in.

After four years struggling to achieve pregnancy, I gave birth to our beautiful daughter, Siobhan Faith, on April 8, 2010. I remained on maternity leave until August when I returned as a crew dispatcher. I was assigned a male trainee who made a verbal threat against me on October 8, 2010. I immediately reported this threat, but due to the managers' inappropriate handling of the harassment, I went over their heads to their supervisor in an attempt to have the threat appropriately addressed.

My managers' retaliation for doing so included harassment, bullying and filing false charges. My research, with the assistance of my shift supervisor, to challenge those charges prompted my managers to collude in misrepresenting my job performance, and when I chose to go to trial to refute the initial charges, (rather than to be bullied out of my crew dispatcher position), those same managers sandbagged me with unspecified accusations. They refused to reveal to me the details of those charges and threatened me with loss of pension, forfeiture of my husband's pension (he also worked at the Railroad) and physical arrest if I did not sign a scrawled, one sentence resignation that very day. I was terrified and under such unexpected and unwarranted threats, I resigned under the most mental duress I have ever experienced.

The writing was on the wall. I had seen how the managers operated in the past, and I feared any further retaliation. Despite a verbal assurance that my resignation that very day would not impact my receiving my pension and other benefits, I was later threatened with pension loss and was illegally denied payment of my accrued vacation time. We were devastated and fearful to challenge this juggernaut of collusion and retaliation. This is the typical bureaucratic bullying endemic at the MTA-LIRR.

Three months later, I was contacted by the MTA-Office of Inspector General, asking if I would serve as a witness to colleagues' complaints about the misogynistic work culture, replete with sexism, racism, threats, pornography and retaliation. The MTA-OIG was given my name as someone who experienced the same treatment that they were bringing to the OIG's attention. **I did not call the MTA OIG—they called me! We were elated to**

have an opportunity to reveal what happened to me to a state entity that could provide me with a fair and full investigation, and offer protection from further retaliation from the LIRR.

The MTA OIG did nothing of the kind. This eight year run around by that agency includes: An initial promise of a protection agreement, which they reneged on only two days later. An initial investigation with as many as twelve other witnesses that the MTA OIG decided to forego. A re-engagement with the MTA OIG only after we reached out to numerous elected officials and an MTA Board Member to request a review by the MTA OIG. That initial re-engagement and interview (three years later) was also discounted until we garnered the support of Congressman Pete King. Suddenly, the MTA OIG ***expressed*** an interest, prompted by the Congressman's advocacy.

Finally, the MTA OIG agreed to interview witnesses we had proposed (a year prior, whom they had never contacted) and we were once again hopeful (January 2014). Another year went by with little or no movement and with us doing all the heavy lifting and continuing to seek out elected officials to highlight the injustice of what was done to me. More than four years after targeting me for exposing the harassment that I and my colleagues were subjected to, the MTA OIG was still stalling and ineffectively investigating the case.

We decided to reach out to our witnesses to compile statements of what they had told the MTA OIG, which included their assertion that I did nothing wrong and didn't deserve the treatment I received, as well as their testifying to the type of harassment and abuse of women that this forum is addressing. We deemed this outreach to our witnesses necessary since none of our witnesses were asked to sign statements at the time of their interviews. **Can you see the plot thickening? Sound familiar? This was years before the #Me Too Movement served as a catalyst for where we now find ourselves. *Time's Up!!***

Only one week after the last testimony was received by Congressman King and sent to the MTA OIG, suddenly there was movement. Coincidence? After four years of being discounted, lied to and misled? **The lead OIG investigator, in a series of phone conversations (all of which are documented), discussed the investigation, his findings, reiterated the demands we were seeking and told us that the LIRR was willing to negotiate a settlement in close accordance with all items of compensation that I had been seeking since I was bullied out of my job.**

I am still waiting! All I have received has been denial of any compensation, reversal of what I was told, and a fallacious "formal report" (which I was told would not be

into no return calls, emails or any other type of response—despite their assurances of their concern.

Now, four years later, and after working our way up from the basement of Governor Cuomo's hierarchy to the penthouse offices of Lt. Governor Hochul, and a number of well known and outspoken administrative officials, all supposed women's advocates and cheerleaders, they have continued to delay and deny me a venue to be fairly heard. Fortunately, we have copious files of all our email conversations, and irrefutable documentation of all our phone conversations, conferences and refusals to follow up on their assurances of the governor's concern.

Conversely, our recent contact, one of the governor's counsels and spokesperson, has referred my case to a third entity. In fairness, we are respecting the integrity and confidentiality of that process until it is completed. We will comply with our recent engagement with this investigative agency as we have done with other agencies and individuals, often to our detriment, who are mandated to adhere to a code of ethics that they have fallen woefully short of throughout this nine year attack on me.

Our faith has often been misplaced, but we will go thru this process with the hope that they have spiritual awakening and finally provide fair treatment and long delayed justice.

As the former US Attorney General for the Southern District of New York, Preet Bharara is fond of saying, "STAY TUNED!"

We may have been naïve, but we were persistent, consistent and, although jaded, have steadfastly advocated to be heard and treated fairly.

And this summary is the short version! Thank you for this opportunity for review.

The bottom line is that this is not an employment issue, as the MTA, the LIRR and the OIG would like to spin it. THIS IS AN ISSUE OF A STATE AGENCY COLLUDING WITH ANOTHER STATE ENTITY TO SILENCE A WOMAN WHO WAS HARASSED AND THREATENED AND ROBBED OF HER 27 YEAR CAREER. The shell game is over. They kept shifting responsibility back and forth between the MTA OIG, the LIRR, the MTA Board, and the governor's representatives. And they all should be held accountable for this miscarriage of justice by our Governor, the champion of women's rights.

The support of my family, and our belief that God is always watching, are the only things that have sustained me these last eight years.

We appreciate your time and concern and look forward to a continuing dialogue with concerned individuals.

Respectfully,

Christine and Dennis Reardon

PS: I can, at your request, provide you with witnesses' testimonies to give you a better flavor of the runaround we received. **All of our other witnesses, are willing to speak with anyone who is interested in assisting us. Curiously, all parties involved in this retaliation continue to refuse to contact any of our witnesses.** ***Transparency? Due diligence? Fair and unbiased? Or, business as usual?***

SOME SUGGESTIONS WHICH WE PROPOSE

Transparency and allowing individuals who are the victims of harassment to be privy to the investigation and the statements made by those covering up their egregious behaviors to protect themselves in real time. Victims should not be forced to wait several years and never hear the rebuttal and fallacious rhetoric during the process of investigation and not after the case is closed. Victims should be informed about anyone and everyone participating in the investigation and given the opportunity to have their witnesses accompany them to those meetings.

To remove the protection that the MTA IG's office has in running their own investigation when they are so devoid of integrity. The New York State Inspector General does not have legislative authority over the MTA OIG.

Obviously, to increase the number of women in lead positions on these boards, agencies and investigative units. We are buoyed by the fact that presently our Attorney General, as well as the NYS Inspector General, are women with extensive experience in investigations. Any individual given the authority to protect the victims of the kind of abuses we are here to discuss should be independent from influence by any elected official, or lobbyist with deep pockets or connected to the deeply entrenched "old boys club" culture, and needs to be thoroughly vetted prior to their appointments.

Added to all these investigative entities should be investigative journalists who have demonstrated integrity and due diligence investigating abuses in the system. Unfortunately, integrity and ethics for many of the people involved in overseeing workplace harassment and sexual predatory behavior issues only exercise due diligence

and adherence to ethical guidelines, not out of a true desire to right wrongs, but often, sadly, only from fear of exposure as the catalyst for them to act accordingly.

Their standard excuse of ***"confidentiality"*** and ***"ongoing investigation"*** is an often used ploy to avoid accountability and transparency. "Confidential" is a euphemism for clandestine, covert, cunning, calculated collusion to cover up rather than expose. Harassment and abuse of women grows, like bacteria, when kept in the dark.

As you cast a spotlight on the deeply entrenched agency and bureaucratic shell game, prepare yourself for finger pointing and denial. Don't give up out of frustration and exhaustion. That is what the LIRR and the MTA OIG hoped we would do. We haven't. Thank you for this opportunity to bring to light my story of the abuse that I subjected to for confronting the harassment of women in my office.

Sincerely,

Christine Reardon

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(631) 689-7049 home phone

February 20, 2015

The Honorable Peter T. King
Member of Congress
Second District, New York
Massapequa Park District Office
1003 Park Blvd.
Massapequa Park, NY 11762

Dear Congressman King:

My name is Elaine Senior and I have been employed by the LIRR for 17 years. ***For the majority of my employment, I worked in the crew dispatcher's office and am familiar with how the office operates as well as accepted and commonplace practices on all the various boards.*** When I last worked in crew, I owned the CD1E board. In this position I was responsible for the scheduling of Train Dispatchers, Train Directors, Yardmasters and various other assignments. I am qualified on all boards including the Passenger Board which my colleague, Christine Reardon, owned in 2010.

I have seen the charges against Christine and find *nothing wrong* ***with any of the incidents cited.*** I am aware that she was charged with manipulating the Passenger Crew Board in a dishonest manner. ***I find these charges to be ludicrous especially since*** *those involved in initiating these charges were well aware that they were not valid.* Train personnel got rescheduled all the time. We had our go-to people who would cover jobs consistently and safely. We knew who could fill jobs and who could do it safely and effectively. If a request for rescheduling could be accommodated, it was. ***We were*** *never disciplined* ***or*** *even spoken to* ***about rescheduling someone to a different position. This practice happened before and during my tenure in Crew and was common, condoned and acceptable.***

These actions beg the question of what was the motivation of those individuals involved in this attack on Ms. Reardon's career? ***I feel she was targeted because certain individuals didn't like her (she didn't play the "game") and was professional and challenged them. I also know that as the senior-most person in Crew, she was a threat to other's overtime – including people who targeted her.*** *Managers would target and censure anyone who wasn't in the "old boys' club." If you weren't "in" with the managers you were OUT!* ***I*** *never* ***heard of*** *any problem with Christine's work, personality or professionalism.* ***I do not feel she was treated fairly or appropriately.***

In January 2014, I testified to several investigators in the Inspector General's Office. I have told them all the above. I also shared incidents of *racism, sexism and violence* ***in the crew dispatcher's office.*** ***I*** *experienced it, witnessed it, complained about it and testified to it.* ***There is a*** *real fear of retaliation* ***among a number of employees if you should*** *challenge the hostile culture.*

One employee in particular has been, and continues to be, spared discipline for his aggressive and inappropriate language and behaviors. He freely uses the *"C" word and the "N" word.* ***I have heard him scream the "C" word and intimidate fellow crew dispatchers. He has told women in the office to*** *"go F#*k themselves," "stick it up your a#*!"* ***and other such nasty and***

aggressive statements. He has told female co-workers to "jump off a bridge", "go hang yourself"; and told one co-worker that *he "hopes she dies of breast cancer." This is the work setting that Christine and I were forced to endure.*

I understand that when Christine complained about a threat she had received in this documented hostile environment (one denied by managers), she was not supported but rather told that they didn't think that what she was told by a male employee was threatening in that "context." Are they serious? They knew what we put up with and never challenged it. ***Managers would hear verbally inappropriate confrontations and physical threats, but would retreat to their offices. Some of the*** *culprits* ***in these incidents were the*** *managers' favorites* ***and were not confronted or disciplined. If the managers didn't like you, you would be treated unfairly.*** *The clear message was, don't challenge any of the crap that goes on.*

Coincidentally, *not five days after I met with agents of the MTA Inspector General and testified to all of the above,* ***an article appeared in the NY Post that cited just such an incident in the very office I worked in when a worker was threatened and cursed at by a supervisor. I know it to be true*** *because I was the woman threatened* ***and yet,*** *managers at the Railroad still deny the problem and Ms. Reardon still suffers from the targeting and retaliation she received at the hands of these managers.*

Some of these culprits continue to be promoted and moved, contrary to what I was assured would *NOT* ***happen in the course of this investigation.*** *Federal courts, the NY State Division of Human Rights, and articles in a major New York newspaper have done little to address the inappropriate work environment – nor provide any relief for Mrs. Reardon who was wronged.*

I hope that, as a result of an extensive investigation by the MTA OIG, *appropriate actions will be taken to correct the culture of hostility and retaliation that thrives in environments that are not properly managed.* ***I trust this will happen in a timely fashion and that anyone involved in these behaviors will be appropriately disciplined.*** Furthermore, I would expect anyone involved in targeting Ms. Reardon and misrepresenting her performance in crew as worthy of any discipline should be dealt with in a severe manner to address the egregious nature of their wrongs and send a clear message that such behaviors will not be tolerated.

I trust that, at *the conclusion of this long process which Ms. Reardon has been subjected to, she will be made whole and have appropriate restitution for what was so wrongly taken from her.*

Sincerely,

Elaine Senior
Cc:
Mr. Michael L. Boxer
Special Council/Intergovernmental Relations
MTA Office of the Inspector General
2 Penn Plaza FL 5
NY, NY 10121

The article in the NY Post clearly spoke to the **hostilities and unsafe environment** that existed in **my office** and which has been denied by managers. Amazingly, the crew supervisor referenced, Monica Hunter, had been named in an incident **several years earlier** when **she allegedly** threatened to "cut" **a coworker whom she was supervising.** Ms. Hunter was reassigned to another department for a short time and **allegedly a notation was put in her file restricting her from working future supervisory positions. She was** again **in a supervisory capacity in the cited incident.**

Coincidentally, **this article was published only** several days **after your staff interviewed several of my former coworkers who made statements that supported my work performance.** They further supported my contention that I was targeted and wrongly portrayed **as improperly performing my job as a result of calling to attention my supervisors' inactions in addressing a clearly hostile work environment of which they were aware and which was documented repeatedly. An** incredulous coincidence **that two of these workers,** Elaine Senior and Enid Chang, **were the very two women in my office that were threatened in the incidents with Ms. Hunter.** Yet, the threat I received was not deemed serious in the "context" of my office environment. **What will it take to repair the** culture of threats, racism and violence in that office?

Also mentioned in that article was the highly publicized 2009 incident in which an engineer, Ronald Cabrera, was fired for "letting a passenger drive a train for 20 miles," actions that were "potentially deadly." The Post did not mention that Mr. Cabrera was subsequently rehired and is now again employed by the LIRR.

Also highlighted was the case of a LIRR engineer, Carrigan Diaz, who went through a stop signal and as a result derailed his train, causing delays. Damage to equipment and tracks and the subsequent cost of manpower to repair the damage was not assessed in the article The Post stated that, "As of November 2013, no punishment had been meted out." These two gentlemen are still employed by the LIRR, yet I was intimidated and coerced into resigning under false charges and threats!

The article concludes with the following quote from Adam Lisberg, an MTA spokesman: "The LIRR, like any other large employer, is going to have **some small number of people who do stupid things on the job."** I believe that is probably true. However, to have as many as six employees in a department of approximately 25 (like the Crew Dispatchers' office) seek relief from discrimination and the hostilities and retaliatory actions of the same managers and coworkers, speaks to another reality. Although I am not a follower of the NY Post, I became aware of this article through the kindness of former coworkers who knew what I went through and alerted me to this article. Your support, and theirs, has been comforting.

Lastly, one of my former coworkers, identified by me and several fellow crew dispatchers as being one of the "ringleaders" of this culture of hostility and retaliation, recently received discipline for getting into a fight with a coworker. This incident occurred the same week we met with you in October 2013. As we have shared with you, this individual has been spared discipline numerous times in the past and I feel the only reason he had any discipline for this incident was due to the increased scrutiny that your office has provided — and the managers' reaction to said scrutiny.

In spite of his history of threats, altercations and hostilities (and managers' awareness of this) I have been told that he is still assigned Special Duty assignments which carry privilege, prestige and increased earnings. Again, mid-managements' favorites, or may I be so bold as to say, their henchmen, are protected, rewarded and unassailable. Insuperability clearly communicated.

Again, I thank you for your continued efforts to help me attain appropriate relief from the malfeasance which impacts me daily.

The Honorable Peter T. King
Member of Congress
Second District, New York
Massapequa Park District Office
1003 Park Blvd.
Massapequa Park, NY 11762

June, 16, 2017

Dear Congressman King,

We, the undersigned, served as witnesses before investigators with the MTA OIG in and around January 2014 advocating that Ms. Christine Reardon receive fair treatment in a clear injustice that was perpetrated against her by the LIRR. One year later (2015), when there still appeared to be no movement in the investigation, Ms. Reardon asked us to provide written summaries of the salient points of our testimonies, since no transcripts of our testimonies were ever presented to us for review and confirmation. We subsequently sent them to you for your review and assistance, with cc's to Mr. Michael Boxer, Special Counsel for Intergovernmental Relations at the MTA OIG.

We have recently been provided with, and reviewed, the MTA OIG's report. It is filled with inaccuracies, misrepresentations and downright omissions. The report appears to be clearly biased and does not reflect what we, former Conductors and Crew Dispatchers, experienced, nor what we testified to the MTA OIG, were the commonplace events that occurred in Ms. Reardon's office regarding job assignments, rescheduling, etc., that she was wrongly disciplined for. Furthermore, it seems clear that she was retaliated against for standing up for herself as well as other women in her office who were harassed and retaliated against for not acquiescing to corporate bullying and targeting.

It has been communicated to us that, despite being made aware of our willingness to challenge the veracity and integrity of the report, the MTA OIG is not interested in discussing those inaccuracies with us. We are, therefore, requesting a fair, thorough and independent review of how Ms. Reardon was treated by the Long Island Rail Road, as well as by an extended, convoluted, and clearly inaccurate and biased investigation by the MTA OIG. It should be noted that as early as January, 2011, the MTA OIG was alerted by as many as a dozen of Ms. Reardon's co-workers to the hostile environment that existed in Ms. Reardon's office--replete with racism, sexism, pornography and retaliatory managerial practices. Ms. Reardon still suffers from the culture that thrived there.

Congressman King, we appreciate what you, the Governor's representatives, as well as the elected officials, who have advocated for Ms. Reardon during this long six-year debacle, can do to intervene in this injustice and assist in achieving a fair resolution for a loyal employee we knew, worked with, and never had any issues with her performance as a Crew Dispatcher or with her professionalism and integrity.

Sincerely,

Elaine Senior

Crew Dispatcher

I, Elaine Senior, as a former Crew Dispatcher, declare under penalty of perjury, that the above group statement was approved of by me and is truthful and based on my knowledge and experiences as a Crew Dispatcher at the Long Island Railroad. I contributed to this group statement after viewing the MTA OIG's report that was inaccurate and did not fully reflect my contribution to the investigation by the statements I made to the MTA OIG team in my meeting with their investigators.

Furthermore, it has been over six months since I contributed to this statement and I have yet to be contacted by anyone from the MTA OIG or the other individuals whom have been made aware of my and my fellow witnesses' concerns regarding the entire investigation. This lack of contact is despite Christine Reardon having continually communicated my request that I be contacted in order to be properly vetted and my testimony be accurately entered into the record. The MTA OIG report is not reflective of what I know to be true as a former crew dispatcher on the LIRR and what I testified to in my contacts with the MTA OIG's representatives.

In retrospect, to add insult to injury, my first contact with the MTA OIG preceded my meeting with them in January 2014, by three years. It was in early 2011, one month after Mrs. Reardon was wrongly accused and bullied with unwarranted threats to her and her husband and subsequently forced into ending her career, that I was interviewed by MTA OIG investigators. I was called into my supervisor, Eric Lomot's office, and met with the investigators who asked if I had anything to say about the office. They failed to mention that this interview was prompted by complaints by numerous co-workers to the hostile environment that I and other employees, including Mrs. Reardon, experienced on an almost daily basis. Where can I begin!

I was uncomfortable speaking to these investigators about any issues in that office, since I was in the very supervisor's office who did nothing to address the hostilities, sexism, racism, pornography, threats and retaliation to which I was exposed. I was uncomfortable with an interview conducted in a setting that could expose me to further harassment by those individuals who contributed to the hostile environment. I was also uncomfortable and chose not to share in that setting since Mr. Lomot left his cellphone on the desk before he exited and I was concerned that he was monitoring that interview and, based on my experiences in that department, feared prejudicial treatment and retaliation.

A few weeks later, I called the MTA OIG and volunteered to meet with them in a safe setting to comment on the hostilities that I was uncomfortable speaking about under the scrutiny of my supervisor and some of the other individuals who contributed to the hostilities that I and my coworkers experienced. I was informed by the MTA OIG that, regarding the investigation, they had moved on. As I reflect on the ongoing injustice to Christine Reardon, I see a disturbing parallel that calls into question the motivations and effectiveness of the MTA OIG in addressing wrongs at the LIRR and intervening in a comprehensive and ethical way to provide relief to victims of supervisory mismanagement and retaliation.

When are these people going to be held accountable for their actions? When will their aberrant behaviors that are unethical, unprofessional, and unwarranted be properly censured and prohibited rather than condoned. There is a clear pattern of favoritism by managers toward those employees involved in creating and sustaining a hostile environment. There is an even more egregious pattern of managers and supervisors retaliating against employees who challenge supervisors and coworkers on their racist, sexist and threatening actions toward employees. I have witnessed it and have also been subjected to such treatment.

I am open and welcome any contact from individuals who are concerned and seek to properly investigate the injustice which Mrs. Reardon continues to be subjected to and can intercede to advocate for appropriate relief and compensation.

Sincerely,

Elaine Senior

December 5, 2014

The Honorable Peter T. King
Member of Congress
Second District, New York
Massapequa Park District Office
1003 Park Blvd.
Massapequa Park, NY 11762

Dear Congressman King:
I have been employed by the LIRR for almost 30 years and have served as a crew dispatcher and shift supervisor for 15 years. *I personally supervised Mrs. Christine Reardon and viewed her job performance as exemplary. I observed her assignment practices as acceptable, commonplace and approved of by management.*

I reviewed the original charges levied against Mrs. Reardon and found them to be without merit or validity.

I, as a shift supervisor with a thorough knowledge of the workings of crew assignments, assisted Mrs. Reardon in researching numerous conductors' work assignment histories as well as the scheduling and rescheduling practices of fellow crew dispatchers. *I found nothing untoward or different regarding Mrs. Reardon's job performance from that of other crew dispatchers in reference to her husband, Dennis Reardon, or many other train personnel.*

My managers tried to intimidate and pressure me to not support Mrs. Reardon ***in her research that would challenge and refute the charges and threatened discipline against her.*** I supported her because it is a function of my position as shift supervisor as well as because I thoroughly believe that she was targeted and falsely accused and threatened with discipline. ***I believe this targeting of Mrs. Reardon*** *was retaliation for her challenging her supervisors for their continued lack of action regarding the threat she received in a hostile work environment that existed, and continues to flourish, to this day.*

I had made numerous statements, before the incidents that resulted in Mrs. Reardon's ouster, regarding the hostile and prejudicial culture condoned by coworkers and managers in the crew dispatchers' office. I have continued to observe and make statements to managers about the hostile environment and prejudicial targeting of employees whom managers single out. ***I have also observed and*** *challenged managers who favor and support employees who have flagrantly and repeatedly performed their duties in inappropriate ways. These employees receive carte blanche approval.*

I have also witnessed harassment, intimidation, verbal threats, physical altercations, sexism, racism and inappropriate statements and behaviors of a lewd and sexual nature.

I have also recently reviewed the additional charges of mishandling job assignments that Mrs. Reardon was threatened with, yet never shown, at her trial and find them to be completely without merit or substance. ***I would like to add that I have owned and worked the job vacated***

***when Mrs. Reardon was pressured into resigning. As such**, I have perhaps the most detailed knowledge of assignment practices. I attest that Mrs. Reardon did nothing wrong and that the accusations against her were false and baseless.*

***I met with investigators in the Office of the MTA Inspector General in** November of 2013.* I have also had *numerous phone interviews* with Mr. Michael Boxer, Special Counsel/ Intergovernmental Relations for the Office of the MTA Inspector General. I have relayed all the above information to him and his team ***and was given the impression that they are invested in correcting the hostile and retaliatory culture in my office and in** taking action to remedy the injustice that Mrs. Reardon has suffered.*

***I am dismayed that**, in spite of all the evidence and documents that I provided to the MTA IG as well as the corroborative statements and documents that have been provided for their review by fellow coworkers, **Mrs. Reardon's quest for justice and to be made whole is still being** blocked by misrepresentations by managers at the LIRR Crew Dispatchers' office.*

***I am open and willing to be contacted by you for any clarification necessary regarding my statements**. I am willing to meet with you and Mrs. Reardon. I am also willing to meet in conjunction with Mr. Boxer and Mrs. Reardon, as she has requested, if it will aid in addressing the retaliatory culture that constructively resulted in what I feel was an assault on Mrs. Reardon's integrity and career.*

Sincerely,

Edward Hartmann

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Testimony from Council Member Helen Rosenthal
Joint Senate and Assembly Public Hearing to Address Sexual Harassment
May 24, 2019

Good afternoon. My name is Helen Rosenthal. I represent the Upper West Side in the New York City Council, and am Chair of the Committee on Women and Gender Equity.

Thank you to Chairs Skoufis, Biaggi, Salazar, Titus, Crespo, and Walker for convening this critical hearing on sexual harassment in the workplace. Today's hearing gives the public another opportunity to hear directly from harassment survivors about the real-life impact of current laws, so that the failures of the current system can be brought to light and addressed through legislation.

It also gives the public an opportunity to hear from those responsible for addressing sexual harassment in NYS government as well as private businesses.

February's joint hearing in Albany, the first state-level public hearing on workplace sexual harassment since 1992, revealed the necessity for comprehensive, systemic improvements to workplace culture.

I commend you for this second hearing. I am hearing elected officials ask the administration good, common sense questions about accountability, the need for trauma-informed investigations, as well as process, numbers, and transparency.

And, I hear you asking how complainants are accommodated during an investigation. You are digging in to the details. Your questions are thorough, smart, probing, rigorous, and spot-on. The public is listening to you and to the responses. The public is grateful to each of you. Persist.

The personal, professional, and societal effects of sexual harassment and discrimination in the workplace are staggering. Harassers interrupt the lives of survivors-- they stand in the way of their ability to earn a living and rise professionally; they intimidate, coerce, manipulate; they attempt to strip survivors of their dignity.

Due to the long-standing pervasiveness and culture of silence around discriminatory workplace behavior, we can never fully know the number of women who have been driven from jobs because of sexual harassment; or the pain and suffering that harassers have inflicted; or the talent that has been drained from workplaces and industries.

Thanks to the brave voices of so many survivors and advocates who are challenging the status quo, we are on the way to eradicating this toxic culture. Sunlight is the best disinfectant.

We owe these survivors not only our gratitude, but action. As the State considers reforms on sexual harassment, they should look to New York City as a model. We have led the way in establishing sexual harassment practices and policies.

Last spring, I was very proud to play a leading role in the passage of the Stop Sexual Harassment in NYC Act. The Act requires enhanced training for all public and private sector employees; provides recourse for people who have been harassed and discriminated against through establishing a trauma-informed statute of limitations; and increases transparency and accountability within City government, the largest employer in the five boroughs.

We are moving forward with a second hearing to review additional legislation.

Since 2009, New York City has applied a standard that sexual harassment exists under City Human Rights Law when an individual is "treated less well than other employees because of gender" and the conduct complained of consists of more than "petty slights or trivial inconveniences."

We rightly codified this more protective standard into law, and as a result, workers in New York City enjoy far greater protections against sexual harassment than workers elsewhere in New York State.

Your slate of legislation which will provide these protections across the state is now under consideration, and I will proudly introduce a resolution in the City Council next week supporting these bills.

Chief among these is Assembly bill 7083 and Senate bill 3817, which will finally remove the current "severe or pervasive" legal standard for demonstrating discrimination under state Human Rights Law. This burdensome standard clearly impedes employees experiencing harassment from bringing claims forward, and must be changed.

My resolution also supports legislation which will strengthen protections for workers, extend the statute of limitations for filing a discrimination complaint, amend the State constitution to expand protected classes, and increase language access.

While it is essential that the State pass these bills, doing so does not mean that our work will be over. New York must continue to lead on this issue. We must ensure that survivors know their rights; that bystanders know how to intervene when they see sexual harassment; and that harassers know that the days in which they could operate with impunity are over.

As elected and public officials, we must clearly draw the line against what has been tolerated for so long. Ending sexual harassment and discrimination is fundamentally a social justice issue, in which an injury to one is an injury to all. This issue demands the same persistent energy and attention given to the Reproductive Health Act, rent reform, and speed cameras in school zones.

Thank you again for the opportunity to testify. I am happy to answer any questions.

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Public Hearing

May 24, 2019

Prepared and Presented by Leeja Carter
Development and Membership Manager of Black Women's Blueprint

Good morning members of the Senate and Community,

Thank you for the invitation to give testimony on the issue of Sexual Harassment in New York State Communities. My name is Leeja Carter and I am representing Black Women's Blueprint this morning. Founded in 2008, Black Women's Blueprint works to place black women and girls' lives and struggles squarely within the context of larger racial justice concerns and is committed to building movements where gender matters in social justice organizing so that all members of Black communities achieve social, political, and economic equity.

We are the conveners of the Black Women's Truth and Reconciliation Commission, held 3 years ago at the United Nations, as well as the March for Black Women which was held right outside of this very room in 2018. With the recent federal Administration's threats to make vital cuts to anti-rape, anti-battery, and anti-stalking service programs guaranteed by the Violence Against Women Act (VAWA), we are running out of places to turn to for safety and justice. New York City must be on the frontlines of protecting the rights of its most marginalized residents. Women and girls in our communities are under siege - we need policymakers to listen to them and we need to institute mechanisms for public involvement and oversight over any and all gender and racial equity efforts.

The MeToo movement has created a necessary conversation on sexual harassment in the workplace. However, women of color, especially immigrant women or color, and those working in lower paying jobs are often left out of the conversation. Women working in the foodservice industry, blue collar jobs, and factories are often overlooked furthering marginalizing their experiences. It is time that we center the experiences of our most marginal women making their lives, needs, and experiences visible.

As women continue to report, seek support, and ways to address workplace cultures that violate their most basic rights - we have to dismantle the misogyny and patriarchy that lives between our sheets, sits at the counter in the bars of our neighborhood businesses, lurks in our parks, and violates women that walk through them day and night.

To where do we run when offices and restaurants foster a culture of harassment and violation? There is risk in bystander intervention and innocent bystanders also fear for their lives in those moments of advocacy. We must center community and systematic accountability for the protection of our women.

Prevention:
Recognizing that few resources exist that are culturally relevant and focus on preventing harassment, rape and sexual assault before it occurs, we developed innovative programs focused on identifying and preventing sexual violence before it occurs. Our Institute for Gender and Culture delivers prevention education curricula based on an understanding of the complex interplay between the individual, relational, social, cultural, environmental, historical and persistent structural factors that influence the spectrum of discrimination, oppression and violence that impact people's lives.

Intervention:
We specialize in liberatory bystander intervention models, transformative and healing models as well as asset-based community accountability models. Using proven effective pedagogy and methodologies, the Institute works to equip people, groups and /or organizations with a framework for developing strategies anchored in civil and human rights as key points for intervention.

We are grateful to the Senate for calling this hearing to give further light and conversation in hopes to creating necessary change that benefits women in our state.

Thank you.

My name is Red Washburn. I am a trans, gender non-conforming, and non-binary Associate Professor of English and the Director of Women's and Gender Studies (WGS) at Kingsborough Community College. The Concentration, the first of its kind in CUNY, is celebrating its 25th anniversary this year together with the 50th anniversary of Stonewall.

Six months after I came out as trans at work by requesting a name and pronoun change and sharing that I was getting top surgery, Kingsborough's administration announced that it was defunding WGS. I suspected that I would face transphobia, so I waited until after I got tenure to come out on campus. It turned out that my suspicions were correct. I have filed a complaint regarding my concerns as an employee. However, I also feel that I must speak out as a citizen of this City regarding the harm being done to our students, your children, and to our precious higher education system.

As I have fought for students to have access to WGS, the administration has increased its harassment and retaliation against not only me, but against our students and WGS programs.

Kingsborough's administration has discriminated against me during my transition. Public Safety ordered me to come in for an investigation when I was on annual leave and on post-surgical bed rest. The administration wouldn't update my name in its system, directory, and course offerings. It switched my teaching schedule one day before the fall semester. It repurposed the WGS office the first week of fall classes, changed the locks the week after my revision surgery, just before the spring semester, and put WGS archives and my belongings in storage. It recently blocked me from making any curricular decisions as a director. Harassment based on gender identity or disability, and retaliation for complaints of discrimination runs contrary to New York law and CUNY regulations, and these actions ignored my surgeon's and therapist's directives.

Earlier this year, New York State passed the Gender Expression Non-Discrimination Act after a nearly two-decade battle led by trans advocates. Last year, the New York City Council passed bills to create non-binary birth certificates and educate business owners on requirements for all-gender restrooms. Two years ago, CUNY issued a statement to protect transgender and gender non-conforming students. Despite the anti-trans statements and regressive policies of our federal administration, NYC has taken bold steps to protect trans New Yorkers. And yet Kingsborough has fallen out of step with these protections, both in CUNY and NY.

This sustained harassment caused me, my students, and the WGS Program much harm. It created the need to take sick leave in the fall and get a second revision surgery this winter. Not even a month revision post-op, there is the likelihood that I will require yet another – this time a third – procedure in the late spring.

At this political juncture of #MeToo, #TimesUp, #BlackLivesMatter, #TransLivesMatter, and #SanctuaryCampus movements, WGS is more relevant than ever. Community college students deserve WGS for the pleasure of learning, for opportunities to transfer, and for access to work, and shrinking their academic opportunities connected to social

justice for LGBTQ and women students, the majority of whom are working-class students of color, at this moment in history is unconscionable.

I am not alone here. The Association of American University Professors issued a report on gender and Gender Studies. We have received overwhelming support from across the CUNY's from WGS faculty and students, the National Women's Studies Association (NWSA), and other prominent faculty across the nation in the form of letters, petitions, lectures, and roundtables, among forthcoming events tied to NWSA's "Gender Studies Under Fire."

The institutional transphobia, coupled with Kingsborough's sexist devaluing of WGS, elucidates that the college is a hostile environment for LGBTQ students who are both interested in these issues, along with multiculturalism and diversity, and trying to live their truths. It is neither a safe place for gender non-conforming and trans faculty to work, nor for LGBTQ and WGS students to learn.

Red Washburn, PhD, is Associate Professor of English and Director of Women's and Gender Studies at Kingsborough Community College (CUNY).

Red Washburn can be reached at 718-916-8171. Red uses they/them/theirs pronouns.

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Audacia Ray, Director of Community Organizing and Public Advocacy
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Good afternoon and thank you to everyone who has made this hearing possible. My name is Audacia Ray, and I am the Director of Community Organizing and Public Advocacy at the New York City Anti-Violence Project. I am a queer woman, a former sex worker, and a survivor of sexual and intimate partner violence. As part of my role at AVP, I serve on the steering committee of Decrim NY, a coalition to decriminalize, decarcerate, and destigmatize the sex trades in New York.

For nearly 40 years, the New York City Anti-Violence Project has provided free legal and counseling services to lesbian, gay, bisexual, transgender, queer and HIV-affected survivors of hate, sexual, and intimate partner violence. We operate a 24/7 bilingual English/Spanish hotline, and we get a call from a survivor about once every three hours. LGBTQ survivors reach out to AVP for many reasons, but some of these include: support with making safety plans around dealing with an abusive partner, to report incidents of hate violence, and to get support around options for dealing with sexual and gender-identity based harassment at work and school.

When AVP talks about violence and its impact on LGBTQ people, we talk about violence that is perpetuated on members of our community because of bias and discrimination from individual and state entities that hold power over marginalized identities. We also are talking about the violence and harm that LGBTQ and HIV-affected people perpetuate against each other, inside our community. These experiences of violence around sexual identity and gender orientation often intersect with and are exacerbated by racism, ableism, classism, and other forms of bias. My colleague Briana Silberberg will testify today about AVP's findings from our report about employment discrimination and its impacts on trans, gender non-conforming, and non-binary New Yorkers. I am here to talk today about the impacts of workplace sexual harassment on people in the sex trades, many of whom identify as LGBTQ.

AVP is very clear that sex work is work, and that people participate in the sex trades to meet economic and survival needs. All labor under capitalism is exploitation, and the sex trades are part of that. Sexual harassment and violence in the sex trades show up in ways that are both unique to the industry and familiar to other workers.

Because of widespread employment discrimination and high rates of youth homelessness, LGBTQ communities disproportionately engage in sex work for survival, and this is particularly true for trans and gender non-conforming people. AVP's report *Individual Struggles, Widespread Injustice* found that 22% of trans and gender non-conforming (TGNC) survey respondents were unemployed, which is 5x higher than the NYC unemployment rate. As a result, many TGNC people engage in sex work to survive. *Meaningful Work*, a report co-published by the National Center for Transgender Equality and the Red Umbrella Project, found that 40% of Black trans people self-report having engaged in the sex trades. The Urban Institute

report *Surviving the Streets of New York* found that LGBTQ youth in New York trade sex at 7-8x the rate of their cisgender, heterosexual peers.

LGBTQ people participate in the sex trades by choice, circumstance, and coercion – and because the sex trades are criminalized and stigmatized, people who experience discrimination, labor exploitation, and sexual violence in their jobs and because of their jobs have little recourse. People in the sex trades are skilled at negotiating boundaries and communicating about what is acceptable to them in the context of the exchange of sexual labor for money. However, because of criminalization in combination with other factors that make workers vulnerable - like immigration status, race, and gender identity – people in the sex trades cannot safely report harassment that happens in the workplace.

Criminalization flattens the understanding of what qualifies as harassment and discrimination in a workplace where people are trading sex or selling a fantasy of sex. When management in a massage parlor pressures workers to exchange sex acts they don't want to perform in order to maintain their employment, this is harassment. When a dancer is told she cannot get a shift in the strip club she works in because she's black and there is already a black dancer scheduled for that shift, that is discrimination. When an independent escort consents to meet a client in his hotel room for an hour and he removes the condom they agreed on, this is violence.

Criminalizing the entire sex industry does not help the workers in these individual situations. However, ensuring that the bills currently under discussion create pathways to reporting harassment and receiving support for people in the sex trades is key. In order for sexual harassment legislation to work, it must work for all members of the work force, including people in the sex trades and particularly the most marginalized LGBTQ, immigrant, and survivors in the sex trades.

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Thank you for having us here today. I am Briana Silberberg, I'm a Community Organizer at the New York City Anti-Violence Project (AVP), and a proud transgender woman. I am appreciative and glad to have this opportunity to speak with you today.

For nearly 40 years, AVP has served New York's lesbian, gay, bisexual,transgender, queer (LGBTQ) and HIV-affected communities through direct services and advocacy. We are the only organization in New York City that provides free counseling, legal services, and does advocacy with LGBTQ survivors of sexual harassment and sexual violence. We also do work on a statewide level, and are members of the New York State Lesbian, Gay, Bisexual, Transgender & Queer Intimate Partner Violence Network ("The Network") a statewide, multidisciplinary group of direct service providers, community-based agencies, advocates, educators, policy makers, and funders who are working on behalf of LGBTQ communities affected by intimate partner violence to ensure that intimate partner violence services are LGBTQ inclusive.

In our work AVP has noticed a few trends about how sexual harassment uniquely affects transgender, gender non-conforming, and non-binary (TGNCNB) communities that we find disturbing and that warrant the legislature's attention. In December of 2018 we released a report, entitled "Individual Struggles Widespread Injustice: Trans and Gender Non-Conforming Peoples' Experiences of Systemic Employment Discrimination in New York City" in which we surveyed 118 TGNCNB respondents on their experiences regarding workplace discrimination and harassment, and I want to share with you some of the findings, to paint a picture of how dire and serious the situation is for TGNCNB communities. We want to make it clear that TGNCNB people experience both sexual harassment and harassment based on our gender identities, and that these forms of harassment *are not* the same thing. Often we hear solely about discrimination in the hiring process, but today I want to share with you what we found regarding on the job harassment for TGNCNB people in the workplace. Additionally we want to touch on not just harassment but reporting, and what factors contribute to if people even do report, and why they might not.

Per the report:

Harassment in the Workplace:

- 33% of respondents reported receiving unwanted sexual comments in the workplace.
- 65% of survey respondents have been out as TGNCNB to at least one person at their job since January 2016. 81% came out via an in-person disclosure.
- 63% of respondents who were not out to anyone at work as TGNC wanted to come out but felt barriers stood in their way.

- 56% of those not out at work cited fear of discrimination as their main barrier. About half of respondents listed uncertainty of co-worker/supervisor responses, no desire to disclose, anxiety and isolation.

Experiences With Human Resources:

- Of respondents who were employed in workplaces that had human resources (HR) departments, 76% did not report a discriminatory incident to HR.
- Although the number of respondents who reported was very small (13), 77% of discrimination reported to HR did not end and 77% of respondents felt that HR response was inadequate.
- Many reasons were listed by respondents for why they did not report to HR including
    - "HR is actively transphobic"
    - "HR is useless and way less sensitive/competent than my coworkers or supervisors. The last people i would go to with a sensitive issue. So far removed from my actual workplace.
    - "HR will tell others without my knowledge or consent and I don't want to deal with that or be outed more."
    - "I don't want people to think I am difficult to have around, or a problem, or someone they have to be stressed out about, as a result of my gender."
    - "I was too traumatized."
    - "My supervisor instructed me not to tell HR."

Supervisor Responses:

- Of respondents who had a supervisor 42% reported incidents of discrimination to the supervisor. However, of the 58% of the people who did not report it to their supervisor, 46% of those respondents cited that they did not do so because they had a complaint about their supervisor.
- When respondents reported to their supervisor, the most often reported follow-up (20%) was a meeting or mediation among the involved parties.
- 24% of respondents were retaliated against for reporting an incident.
- Reporting incidents did not lead to resolution: 71% of respondents continued to be subjected to discrimination after reporting, and 76% did not feel that their supervisor's response was adequate.

Other Approaches:

- Only 32% of respondents chose to directly confront the person(s) in their workplaces who discriminated against them. After this conversation, 52% of respondents said the discriminatory incidents continued at the same rate, and 28% said the discrimination got worse.
- Only 4% of respondents filed a claim with an outside agency (such as New York City's Human Resources Administration, or the New York City Commission on Human Rights), although in recent years the City has made an effort to increase reporting through public education efforts.

- 13% of respondents consulted a lawyer about the discrimination they experienced. Of these about two-thirds had their cases taken on, while the remaining third were informed that there wasn't enough evidence.
- 10% of respondents worked in a job, such as sex work, in which they did not have legal protections or recourse.

This situation is obviously untenable and intolerable. TGNCNB communities deserve to have comprehensive and helpful resources to prevent and combat harassment. I would ask that the legislature pay particular attention not just to the levels of discrimination reported, but also just how hard it is for especially marginalized communities to even report incidents of harassment or discrimination. It needs to be made easier, and less onerous for people who have suffered harm to have documented and dealt with the ways they have experienced harassment. Otherwise it is hard to imagine how they situation will get any better for us.

We at AVP do support the bills in discussion in these hearings, although we want to raise questions about the language used and mechanisms included to punish perpetrators of harassment. We do not believe that criminalizing behavior and putting those who have done harm through a criminal justice system that can lead to carceral justice is just or fair at all. We would ask that options are explored that are in the model of transformative justice.

Thank you again for your time. I hope that these hearings help you in creating structures and systems that better protect those who experience the most harm.

Briana Silberberg
Community Organizer
Pronouns: she/her

Veronica Avila
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Thank you Assemblymembers and Senators for giving me this opportunity to share my comments on sexual harassment and One Fair Wage.

My name is Veronica Avila and I work with the Restaurant Opportunities Center of New York, I have also worked in the restaurant industry.

The restaurant industry is one of the state's largest private sector employers, last year alone the industry was expected to ring in $51.6 billion dollars in sales.[1] While the sector's size and sales have increased every year it is also the industry that employs the largest amount of tipped workers. There are over 400k tipped workers in New York State and about 76 percent work in the restaurant industry. Under New York law tipped workers are still allowed to pay a subminimum wage- which ranges between $7.50-$10 an hour. This means that tipped restaurant workers, nearly 60 percent of whom are women, and almost of third of whom are mothers, are dependent on tips to make ends meet.[2]

Sexual harassment is a societal problem, and it is felt in every sector but dependence on tips gravely exacerbates women's vulnerability to sexual harassment in the workplace, as the EEOC states 'sexual harassment is, above all, a manifestation of power relations'.[3] [4]

The power imbalances created by the subminimum wage system are evident in the fact that many key facets of tipped restaurant workers' employment experiences, from income level to hiring and firing, are dependent upon their relationships and interactions with customers. But it's really a triangulated power imbalance. Tipped workers serve employers *and* consumers, both of whom are in positions to abuse their power.[5] Tipped workers depend on employers to provide them with the opportunity to earn tips, they rely on getting the most lucrative shifts and most lucrative sections. They depend on their co-workers to push food out correctly and promptly. They also, of course, rely on the guest to actually leave a tip- which research has shown is not tied to the quality of service but is often influenced by

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[1] https://www.restaurant.org/Downloads/PDFs/State-Statistics/NewYork.pdf
[2] American Community Survey (2013-2017). IPUMS USA, University of Minnesota, www.ipums.org.
[3] Petrocelli, W.; Repa, W. (1998). *Sexual Harassment On The Job: What It Is & How To Stop It* (4th Ed.). Nolo.
[4] Feldblum, C.; Lipnic V. (2016). *Select Task Force on the Study of Harassment in the Workplace*. EEOC. Retrieved from: https://www.eeoc.gov/eeoc/task_force/harassment/report.cfm#_Toc453686298
[5] See footnote 5.

how many times a server touches a guest, a worker's skin color, and if they wear red lipstick.[6]

The Center for American Progress indicates that the accommodation and food services industry, which includes the majority of tipped workers, is consistently the largest source of EEOC sexual harassment claims.[7] The EEOC states that the harassment claims, including sexual harassment claims, filed in 2015 averaged 'approximately 76 harassment charges filed *daily,*' since 2010 (and as of 6/2016) 'employees have filed 162,872 charges alleging harassment' seeing employers pay out $698.7 million' to settle harassment claims.[8]

The Restaurant Opportunities Centers United (ROC-United) conducted a survey of 103 restaurant workers in tipped occupations in New York State and found that 80 percent of tipped restaurant workers in New York experience unwanted sexual harassment at work and over half reported that this is a weekly or daily occurrence at their workplaces.

We also conducted a national study with Forward Together also surveying about 700 restaurant workers across 39 states on issues of sexual violence in the workplace.[9] The results provide an intimate overview of restaurant workers' experiences with sexual harassment in the workplace. The study found that workplace sexual violence is widespread in the restaurant industry, experienced by all regardless of gender.[10] We found that the power dynamics and highly sexualized environment of restaurants impact every major workplace relationship, with restaurant workers reporting high levels of harassing behaviors from restaurant management (66%), co-workers (80%), and customers (78%).[11] The majority of workers reported sexual harassment was an uncomfortable aspect of work life and reported experiencing 'scary' or 'unwanted' sexual behavior.[12] When comparing data from the seven states that currently have no subminimum wage- meaning all workers earn the same minimum wage- to states with a subminimum wage, research indicated that tipped workers in subminimum wage states experienced half the rate of sexual harassment.[13] The study also found that workers in subminimum wage states were three times more likely to be told by management to 'dress sexier' than workers in the seven One Fair Wage states.[14]

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[6] https://www.livescience.com/20243-waitress-tips-red-lipstick.html
[7] Frye, J. (2017, November 20). *Not Just the Rich and Famous.* Center for American Progress. Retrieved December 15, 2017, from https://www.americanprogress.org/issues/women/news/2017/11/20/443139/not-just-rich-famous/
[8] See footnote 5.
[9] Restaurant Opportunities Centers United, Forward Together, (Oct. 2014). The Glass Floor: Sexual Harassment in the Restaurant Industry. New York.
[10] Ibid.
[11] Ibid.
[12] Ibid.
[13] Ibid.
[14] Ibid.

Instances of sexual harassment in the workplace not only have the impact of being traumatic but they also increase turnover and cause sluggish career advancement for women. So many women are forced to cope with these experiences by leaving their place of employment.[15] Almost two years ago the owner of the Spotted Pig, an acclaimed New York restauranteur, was found to have been rampantly sexually harassing his workforce and allowing guests that visited the off hours floor, which employees disturbingly dubbed the 'rape room', to abuse staff as well.[16] The owner was known to send inappropriate texts, grope women, and force himself on them.[17] One woman even shared a story of kneeling down to collect glasses from a low shelf only to have the owner grab her head and pull it in towards his groin.[18] The workers that came forward, namely women, reported that the owner instilled fear in them by proclaiming he would blacklist them.[19] These were not empty threats, they actually witnessed him blacklisting and harassing employees that stood up to him.[20] It was even reported that the co-owner told women that brought the owner's behavior to their attention, that they could either leave or get used to the lewd behavior.[21] The women silently endured public humiliation and instances of grave sexual violence because they feared the financial repercussions of coming forward, the owner wielded economic power that directly influenced their financial well-being.[22]

The EEOC indicates that workers who experience sexual violence in the workplace do not report harassing behavior, or file a complaint, because 'they fear disbelief of their claim, inaction on their claim, blame, or social or professional retaliation.'[23] An industry report also shares that over a third of women who were tipped workers felt compelled to quit their jobs as a result of unwanted sexual behavior in the workplace.[24] Women that experience sexual violence in the workplace are overall found to be 6.5 times more likely than those who do not to change jobs.[25] Instances of sexual violence in the workplace not only impact those that suffer it, but as the EEOC states it 'affects *all* workers, and its true cost includes decreased productivity,

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[15] McLaughlin, H., Uggen, C., & Blackstone, A. (2017). The Economic and Career Effects of Sexual Harassment on Working Women. *Gender & Society, 31*(3), 333-358.
[16] Ibid.
[17] ibid.
[18] ibid.
[19] ibid.
[20] Sinclaire, H. (December 12, 2017). THE SPOTTED PIG RESTAURANT IN NEW YORK HAD 'RAPE ROOM' WHERE KEN FRIEDMAN AND CHEF MARIO BATALI ARE ACCUSED OF ASSAULT. *Newsweek.* Retrieved on 12/18/2017 from: http://www.newsweek.com/spotted-pig-had-rape-room-where-ken-freidman-mario-batali-assault-746228
[21] Maynard, M. (December 14, 2017). The Restaurant Industry Is Roiling As Sexual Harassment Scandals Claim More Chefs. *Forbes.* Retrieved 12/18/2017 from: https://www.forbes.com/sites/michelinemaynard/2017/12/14/the-restaurant-industry-is-roiling-as-the-sexual-harassment-scandal-claims-more-chefs/#59ac95d85889
[22] Ibid.
[23] See footnote 4.
[24] See footnote 9.
[25] See footnote 15.

increased turnover, and reputational harm[;]...a drag on performance - and the bottom-line.'[26]

A dependence on tips has helped breed sexual harassment in the workplace and keep tipped workers, in particular women, in a constant state of career stagnation and economic precarity.[27] In a culture of the customer is always right, in order to address the intense prevalence and normalization of sexual harassment in the industry New York must adopt One Fair Wage. Seven states, Alaska, California, Washington, Oregon, Minnesota, Montana, and Nevada, have already phased in One Fair Wage for tipped workers. With OFW in place, workers will have the financial stability necessary to provide for their families, plan for their futures, and advocate against sexual harassment in the workplace. Women deserve to have their industry move away from a tiered wage structure that leaves them vulnerable to experiencing sexual harassment, which subsequently also puts them at risk of experiencing mental, physical, and economic harm.[28] We thank those of you that have stood with us and sponsored legislation in the Senate and Assembly and we urge you to call on Governor Cuomo to implement One Fair Wage. Thank you so much for your time.

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[26] See footnote 4.
[27] See footnotes 4, 7, and 15.
[28] See footnotes 4 and 15.

GERSTMAN GS SCHWARTZ LLP

A GOVERNMENT RELATIONS & LITIGATION LAW FIRM

Let me begin my remarks by commending both Senate Majority Leader Andrea Stewart-Cousins and Assembly Speaker Carl Heastie for hosting these additional hearings to address Sexual Harassment in New York in order to seek legislative solutions to the ongoing scourge of sexual harassment. This is terribly important work and we need to leave no stone unturned in working out ways to make our workplaces fairer and safer, as a starting point for making our society fairer and safer.

I am Brad Gerstman of GerstmanSchwartz, LLP. As a former Bronx Assistant District Attorney I took pride in ferreting out corruption and in prosecuting violent criminals and in private practice it have been my privileged to fight to vindicate the rights of victims of all forms of abuse including sexual harassment and employment discrimination of every kind and other labor law violations.

In our Country sexual harassment has been illegal since 1964 yet sometimes it seems as if we will never stamp out this evil. Still we've made some important inroads.

In 1964, the Civil Rights Act of 1964 was passed prohibiting discrimination in the workplace based on race, religion, color, sex, and national origin. This discrimination was made illegal in Title VII of the act.

To this day we fight for victims of discrimination in court using this landmark law!

In 1968 an Executive Order expanded these protections to federal contractors. In 1972, Title IX prohibited discrimination based on sex in schools and expanded the scope of sexual harassment legislation. In '78 the Pregnancy Discrimination Act prohibited employment discrimination of pregnant women. In '80 the EEOC declared sexual harassment illegal. In '86, the Supreme Court ruled that sexual harassment was indeed sexual discrimination. The Civil Rights Act of 1991 expanded workforce protections including very importantly … providing the right to a jury as well as compensatory and punitive damages as a result of the harassment. The Violence Against Women Act of '94 provided evidentiary protections to

claimants and in 1998 the Supreme Court held employers were responsible for the behavior of their managers and clarified quid pro quo sexual harassment.

Historically the Federal government has lead the way but still the federal standard is in some respects imperefect. Under federal law, in order to sustain a claim for sexual harassment based on a hostile work environment one has to allege that the workplace discrimination is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment.

This *pervasive* language has been interpreted at times as a shield for employers and bad actors who tend to argue that a single act of sexual harassment is not enough to sustain a claim. Of course criminal sexual assault is not generally protected but that's small comfort. See (Richardson v. N.Y. State Dep't of Corr. Serv., 180 F.3d 426, 437 (2d Cir. 1999) Petrosino v. Bell Atlantic, 385 F.3d 210, 224 (2d Cir. 2004).

Thankfully in New York City Human Rights Law unlawful sexual harassment may be found if there has been any sexual harassment or mistreatment on account of an employee's gender. The NYC standard is more progressive than federal or state law so a single incident may be enough in New York to sustain a claim.

California State law recently seems to have taken a step toward New York City's standard making it clear that a single incident of harassment is sufficient for a claim to proceed to a jury trial if the incident interfered with the victim's work or created a hostile work environment. Casual incidences of discriminatory comments or "stray remarks" in the workplace can be considered circumstantial evidence of discrimination.

In New York State Governor Cuomo and the State legislature under the leadership of both Senate Majority Leader Andrea Stewart-Cousins and Assembly Speaker Carl Heastie in the 2019 Budget Act made enhancements to the New York State Human Rights Law, expanding protection of the employee against sexual harassment under the New York State Human Rights Law by "non-employees," which would make the employer liable for acts of sexual harassment by contractors, subcontractors, vendors, consultants, and other persons providing services pursuant to a contract.

This is a major leap forward. However, the next frontier however must be to make it clear that the so-called "isolated incident" defense is no defense at all.

Whether we call this the California standard or take local pride and call it the NYC standard it seems high time we make it clear even one act of serious sexual harassment will not be tolerated.

###

Aesha Polanco
322 Kear Street
Yorktown Heights, NY 10591

Thank you Assemblymembers and Senators for giving me this opportunity to share my comments on sexual harassment and One Fair Wage.

My name is Aesha Polanco, I live in Yorktown Heights. I am a member of the Restaurant Opportunities Center of New York and I am a dual tipped worker. I'm both a massage therapist and a restaurant worker. I have worked in the restaurant industry for 11 years and have worked as a massage therapist for 10 years.

My first job was at Chucky Cheese, I was 16. Since then I've gone on to work as a server and a bottle waitress. I mostly like the work that I do. I enjoy working in restaurants because I love to meet new people, I love the family feeling that can sometimes develop. Working at a restaurant also helps me save money on food. I'm a single mother to daughter and it can be tough to make ends meet. In my role as a massage therapist, I like helping clients feel better with their physical and emotional tension.

But though I enjoy the work that I do, because I earn a subminimum wage I depend on tips to make ends meet. I can't count on a weekly paycheck, but what I can count on is at least a weekly occurrence of sexual harassment. Being dependent on tips, needing to make ends meet, leaves me vulnerable to being more tolerant of experiencing sexual harassment at work.

I've experienced sexual harassment from co-workers, guests, and management. I've felt pressured for dates, I've been asked for my phone number- but both guests and management, I've had to endure constant sexual jokes, I deal with sexually suggestive looks and gestures. I've even been shown sexually suggestive pictures by customers. Because I'm paid largely through tips, a manager has even suggested that to increase tips I should alter my appearance to "be sexier" by wearing tighter clothing or make-up.

As a massage therapist, I've had instances that have made me feel extremely uncomfortable and even made me feel unsafe. There was one encounter when where two people had booked a massage, it was two men. As one man waited for his turn to receive a massage he came in to use the bathroom. He ended up taking a shower and then came out in a towel and asked when it was his turn. He stayed

in the room and turned on the TV on to an inappropriate channel. I tried to address it and he got really angry and started cursing me out, all the while this was happening I was scoping a way to protect myself if anything were to happen. I just put my stuff in my car and drove away. While I was in the car I was just shaking. But I needed to hustle, again I'm a single mom with no help and I needed to get paid.

When I do massages often as I massage people's hands people frequently grasp my hand and I have to shake it off.

This also happens a lot in restaurants- when I worked at a night club my supervisor would frequently say things like, let's get married, let me take you out on a date, you should consider it. His wife even worked at the club. This manager was known for engaging with workers- he was having an affair with a bartender. It was really uncomfortable.

When I've experienced these things, sometimes I address it, sometimes I shake it off, but it's hard- I don't want to put my tips at risk. In these moments I've also feared for my physical safety. When I deal with these instances I talk to my co-workers, I go to them for support because we've all experienced it. To try and cope with these instances I've altered my appearance and I've taken steps to increase my safety.

Because I depend on tips I'm vulnerable to sexual harassment from co-workers, managers, and customers. I think passing one fair wage would help give me the stability I need to confront those instances when they happen. I wouldn't have to worry about a lower tip, or having my schedule changed to shifts where I'm likely to receive less in tips, I'd have a steady paycheck- I'd know that I can rely on receiving at least $15 an hour.

Thank you for your time, I hope that you help us make New York the 8th One Fair Wage state. A dependence on tips leaves tipped workers vulnerable to experiencing sexual harassment in the workplace.

Gemma Rossi
189 Meserole Avenue
Brooklyn, NY 11222

Thank you Assemblymembers and Senators for giving me this opportunity to share my comments on sexual harassment and One Fair Wage.

My name is Gemma Rossi and I live in Brooklyn. I'm a member of the Restaurant Opportunities Center of New York and I've worked in the restaurant industry for 15 years, nearly half of my life, and I've spent most of that time as a tipped worker.

My first job was as a coat check attendant at a bar, I was 18. Since then I've gone on to work as a hostess, bartender, server, barista, and manager. I like the work that I do. I love the fast pace of working in restaurants, I enjoy the camaraderie amongst the team, and I like working with people of different ages and backgrounds.

Though there's a lot I enjoy about working in the restaurant industry, depending on tips to make ends meet causes me to endure constant harassment. Us servers rely on guests, co-workers, and management to earn tips and that means they all have a layer of power over us.

I entered the industry when I was 18, it was one of my first jobs, and sexual harassment was the norm. Throughout my career in the industry, I've been pressured for dates, pressured for my phone number and received inappropriate texts. I've endured deliberate inappropriate touching, and I've been repeatedly instructed by management to dress sexy.

I worked in one restaurant that strictly hired women. They wanted us to have what they called, a "a certain look". Servers were told to wear more make-up and tight revealing clothing. And when you're working in a fast paced environment, moving a lot and constantly having to bend over, this attracts a lot of inappropriate behavior. This was also a restaurant where the owner's friends constantly came in and professionality went out of the window. There were no boundaries. If I was told something inappropriate, I had to either engage or run the risk of having them tell the owners I had a bad attitude. The job went beyond giving good service. But for the sake of my livelihood, I had to set my pride aside and just deal with it. I was there for over four years until I couldn't deal with it anymore.

But this is NOT an exception. This is the norm- when I was younger, an owner of a restaurant I worked at was really inappropriate. He'd just walk up to you and massage you, and he'd also go into gruesome detail about his love life. He was so erratic that he'd go from screaming at you to trying to gift you a fur coat. It was really uncomfortable. He was explosive and unapproachable unless he was approaching a member of his female staff to make an advance.

But it's not just guests and management that take advantage of our dependence on tips-it's co-workers too. Relying on tips means you have to stay good with the kitchen. you rely on them to be able to give good service- you have to deal with sexualized greetings and comments and in response, you just have to giggle because you need them to move things quickly for you- so you can get food out to guests. You do what you have to in order to earn a tip.

When I was in those moments of experiencing harassment, I never considered approaching management- I just dealt with it. Approaching management felt like something that would backfire, especially when harassment is coming from management- how do you rationalize going to them for a solution? I knew that attempting to address harassment can mean receiving a smaller tip, or no tip, or some sort of retaliatory action. You're labeled as being weak or not cut out for the job or being able to deal with the public. I've seen workers that address harassment given less lucrative schedules and sections- which directly impacts how much you earn from tips.

Management and owners help foster situations that drive sales. They try to create an environment that sells, and a sexualized environment is how many people think sales are created. And Unfortunately, servers are left to grapple with how to respond to this environment.

In tipped roles, sexual harassment is a normal part of the job. For a long time, I didn't even have any consciousness of it. I entered the industry when I was so young, I quickly understood that tolerating inappropriate behavior was the name of the game. It was expected of me and if I couldn't handle it, then this industry wasn't for me. I thought well 'I guess this is what I signed up for.' And because it was my first job- a tipped job- it shaped my norms. Being constantly harassed is what I expected- and normally I didn't think twice when having to navigate a situation that made me uncomfortable. I've recently also started working as a writing tutor and the difference in treatment is astounding. Women aren't afraid to speak out. Sometimes when I see what people complain about it's shocking to me- what

other's threshold is. Sometimes my reaction is 'really, come on.' But that just stems from this behavior being so normalized so early on for me,

Being dependent on tips leaves this largely woman workforce vulnerable to experiencing sexual harassment at work, by anyone that has any influence over your capacity to earn a tip. My income is directly connected to how willing I am to give into an advance. There's a literal transaction attached to it. If I didn't have that burden, if I didn't have to solely depend on tips- if I knew I had a base wage I could depend on regardless of shift or section- it would free me, and a lot of people up from having to tolerate harassment at work.

Thank you for your time, I hope that you help us make New York the 8th One Fair Wage state. Because A dependence on tips leaves us tipped workers dangerously vulnerable to experiencing sexual harassment in the workplace.

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Testimony before the New York State Senate Committees on Investigations and Government Operations, Ethics and Internal Governance, and Women's Issues, and the New York State Assembly Committees on Governmental Operations and Labor, and the Assembly Task Force on Women's Issues

May 24, 2019

Submitted by Sarah Brafman, Staff Attorney and Marcella Kocolatos, Staff Attorney
A Better Balance: The Work & Family Legal Center

Thank you Senator Skoufis, Senator Biaggi, Senator Salazar, Assemblymember Titus, Assemblymember Crespo, and Assemblymember Walker for convening today's public hearing to bring attention to the persistent sexual harassment and workplace discrimination faced by women, especially women of color, in New York State and, particularly, the economic injustice this form of discrimination perpetuates for low-income working women.

Our organization, A Better Balance (ABB)—a national, non-profit legal advocacy organization headquartered in New York City— was founded with the goal of ensuring workers can meet the conflicting demands of their jobs and family needs, and ensuring that women and mothers can earn the fair and equal wages they deserve in order to provide for themselves and their families.

New York State has long been a leader in developing concrete solutions to end all forms of harassment and discrimination—this hearing is testament to your unwavering commitment to ensuring that every New Yorker can work in a safe and healthy workplace. ABB has been proud to work in partnership with the Legislature to advance many of these pioneering solutions, from leading the effort and garnering support from over 80 organizations statewide to push for six new anti-sexual harassment

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laws in the state last year, to leading the coalitions to pass both the Women's Equality Act and New York's groundbreaking Paid Family Leave law.

We are here today to offer comments about the devastating consequences sexual harassment can have particularly on low-income women of color and women in male-dominated occupations in New York State and to contextualize the issue of sexual harassment among the myriad issues women face in the workplace. Moreover, we will offer several ways the Legislature can more effectively ensure anti-harassment and discrimination law is appropriately enforced as well as suggest certain areas where the law may benefit from expansion.

I. Sexual Harassment is Pervasive in Low-Wage Industries and Male-Dominated Occupations

A Better Balance runs a free and confidential, bilingual hotline where workers can call if they are having issues with respect to caring for themselves or loved ones, including sexual harassment, as well as offers free representation to some workers. A Better Balance's client Luisa[1] worked in the kitchen at a supermarket in New York making $10.50/hour. One of her supervisors repeatedly touched and groped her but she never reported it because she was afraid she would lose her job if she told anyone.

Then, when Luisa became pregnant, she asked her supervisor to stop touching her because she did not want him to harm her baby. After that, he began to constantly ridicule her for having a second baby so soon after her first. Luisa requested to move to a different position in the store but HR ignored her requests. Then, when she asked to avoid climbing ladders because of the risk of miscarriage, one of

[1] Name changed to protect confidentiality.

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her supervisors told her she should go out on unpaid maternity leave and come back to work when she had the baby. Luisa was eventually fired after she requested time off to attend one pre-natal appointment.

Luisa's story demonstrates the multiple, interconnected forms of harassment low-income women face on the job every day and the impossible choices they are forced to make in order to keep earning a paycheck. Initially, Luisa had to endure her supervisor's sexual harassment only for it then to evolve into harassment based on her pregnancy.

Terminated just weeks before giving birth, Luisa suffered tremendous economic and emotional distress as a result of this discrimination. Not only did Luisa lose much-needed income, but she also lost out on opportunities to advance in the workplace. When Luisa was fired, she went to work at a different supermarket where she again started at an entry-level position, while the supervisors who discriminated against her continued to occupy their positions of power. When low-wage working women cycle in and out of the workforce, they lose not only wages, but also seniority and other benefits of continuous employment that would promote economic stability for their families.[2] What began as sexual harassment eventually led to pregnancy discrimination and the perpetuation of the gender wage gap.

Luisa is not alone. Women across New York State face sexual harassment in the workplace every day. In particular, women working in low-wage industries and male-dominated occupations are

[2] *See* Dina Bakst & Phoebe Taubman, A Better Balance, *The Pregnancy Penalty: How Motherhood Drives Inequality & Poverty in New York City* 6 (2014).

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subjected to alarmingly high levels of sexual harassment. For instance, thirty-six percent of live-in domestic workers report experiencing threats, insults, or verbal abuse on the job, often in the form of sexual harassment.[3]

Women in male-dominated occupations, such as the construction industry, also face alarmingly high levels of sexual harassment. A study by the U.S. Department of Labor found that a startling eighty-eight percent of women working in construction experienced sexual harassment in the workplace,[4] a factor that contributes to women's low workforce participation (just 2.7 percent nationally) and promotion rates in that industry.[5]

Often, these women experience discrimination in multiple forms, just as Luisa did. While Luisa fortunately came to A Better Balance, many workers do not know where to turn when they face discrimination and all too often, employers are able to thwart the law.

To that end, below are several recommendations that would help ensure employers, especially those in industries with particularly high rates of harassment, face appropriate consequences for their actions and are deterred from tolerating such behavior in the future. Our testimony today will focus both on specific changes that need to be made to break down procedural barriers employees who have been harassed face when seeking to vindicate their rights, as well as a broader array of suggestions that

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[3] Linda Burnham & Nik Theodore, National Domestic Workers Alliance et al., *Home Economics: The Invisible and Unregulated World of Domestic Work* 33 (2012), https://community-wealth.org/sites/clone.community-wealth.org/files/downloads/report-burnham-theodore.pdf.

[4] Advisory Committee on Occupational Safety and Health, U.S. Dep't of Labor, *Women in the Construction Workplace: Providing Equitable Safety and Health Protection* (June 1999), https://www.osha.gov/doc/accsh/haswicformal.html [hereinafter Women in Construction].

[5] U.S. Bureau of Labor Statistics, *Women in the Labor Force: A Databook* 79 (Apr. 2017), https://www.bls.gov/opub/reports/womens-databook/2016/pdf/home.pdf.

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implore the legislature to take a more expansive look at the types of solutions that will ameliorate the culture of harassment that still pervades in New York today.

Recommendation #1: Extend the Statute of Limitations for All Discrimination and Harassment Complaints filed with the New York State Division of Human Rights from One to Three Years and Remove Other Barriers to Accessing Justice

Last year, as part of New York City's Stop Sexual Harassment in the Workplace Act—a package of legislation A Better Balance also worked closely to help pass—the New York City Council extended the statute of limitations for filing a complaint of gender-based harassment with the city enforcing agency from one year to three years.[6] The State should extend this law to all New Yorkers, and to all forms of discrimination and harassment, to ensure that no matter where a New Yorker may live or what form of discrimination they may face, they can access justice without barriers.

As Luisa's story shows, workers often face multiple, intersected forms of discrimination. For instance, sexual harassment can often be accompanied by race discrimination, or as we saw in Luisa's case, pregnancy discrimination.

The State should also remove additional procedural barriers in the Human Rights Law by amending it to: 1) allow for the recovery of punitive damages for violations of the law; 2) make clear that employers will be vicariously liable for the actions of supervisors and while employers should certainly take steps to prevent harassment, such steps will not allow the employer to avoid liability (though may help reduce the employer's damages); 3) allow for the recovery of reasonable attorney's

[6] *See* N.Y.C. Admin. Code § 8-109(e). *See also* A Better Balance, *Fact Sheet: NYC Stop Sexual Harassment in the Workplace Act* (Apr. 2018), https://www.abetterbalance.org/resources/nyc-stop-sexual-harassment-in-the-workplace-act-april-2018/.

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fees in all employment discrimination cases, not only sex discrimination cases; and 4) eliminate the limiting "severe or pervasive" standard for all forms of harassment.

Recommendation #2: Add Enforcement and Reporting Requirements to New York's Employer Training Law

As of 2018, all employers in New York State are required to have a sexual harassment prevention policy and to conduct annual anti-sexual harassment trainings.[7] While this was a crucial step forward, the law should be expanded in two keys ways. First, it should make clear that conducting the state-mandated training does not allow employers to avoid liability should sexual harassment occur in the workplace.

Second, the law should be amended to require all employers to report that they conducted the trainings and to face civil penalties if they do not do so. Under one of the new State laws, state contractors must include a statement in a bid for a public contact certifying that they implemented a sexual harassment prevention policy and provide sexual harassment training.[8] All employers, not just state contractors, should be required to confirm that they have a written policy and conducted annual sexual harassment prevention training.

Recommendation #3: Broaden Reporting Requirements

While adding a requirement that contractors and private employers report on policy and trainings would be a good first step, the State should also expand the types of information employers must report. Businesses—especially state contractors who earn our hard-earned tax dollars—should

[7] N.Y. Lab. Law § 201-G.
[8] N.Y. State Fin. Law § 139-l.

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not be allowed to benefit if they foster unsafe environments for their employees. Unfortunately, we know they do. For example, we know sexual harassment is rampant in the construction industry[9] and women who leave these jobs cite harassment as a key reason for their departure.[10]

To that end, state contractors and private employers should also be required to report each year to the State on: 1) the number of harassment and discrimination violations against that employer; 2) complaints filed in court and/or with government agencies; and 3) the total number of settlement agreements related to discrimination and harassment, including those with non-disclosure agreements.

Recommendation #4: Enact Policies that are Responsive to the Needs of Specific Industries, Particularly Low-Wage Industries

While the Legislature should work to create broad change spanning all industries, it is also important that the Legislature enact policies that are responsive to the needs of particular industries. In a survey conducted in Chicago, Unite Here Local 1 found that forty-nine percent of housekeepers surveyed have had guest(s) expose themselves, flash them, or answer the door naked.[11] Nearly two-thirds of those surveyed who worked in casinos reported that a patron had groped, pinched, or grabbed them.[12] Recognizing the severity of the issue, in October 2017, the Chicago City Council passed an ordinance requiring hotel employers to provide a "panic button" to any worker who works alone in rooms without other employees present.[13]

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[9] *See* Women in Construction, *supra* note 4.
[10] *Id.* at 7.
[11] Unite Here Local 1, *Hands Off Pants On: Sexual Harassment in Chicago's Hospitality Industry* 3 (July 2016), https://www.handsoffpantson.org/wp-content/uploads/HandsOffReportWeb.pdf.
[12] *Id.* at 7.
[13] Chi, Ill., Municipal Code § 4-6-180, https://chicago.legistar.com/LegislationDetail.aspx?ID=3025158&GUID=06801462-1105-4464-84D8-CAA0C11CEECE&Options=Advanced&Search=&FullText=1.

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As part of the law, employers must also maintain policies that encourage workers to report sexual harassment, make reporting procedures clear, and allow workers to immediately stop working in dangerous settings, to be re-assigned to a different work area, and to take paid time off to sign a complaint against the offending party or testify as a witness in a legal proceeding against the offending party.[14] The law also has strong anti-retaliation protections, prohibiting employers from retaliating against any employee that uses the panic button, files a complaint, or takes time off to pursue legal action against the offending guest.[15]

While unionized hospitality workers in New York City are provided with panic buttons, New York State should follow Chicago's lead and develop a similar policy that includes anti-retaliation provisions, for all New York State hospitality workers.[16] New York should lead the way in devising similarly robust policies for other industries such as the food service industry, where workers are also subjected to harassment by co-workers and guests.

Recommendation #5: Increase Funding for the Division of Human Rights to Proactively Investigate Industries with Rampant Harassment & Discrimination and Fast Track Certain Complaints

Currently, the State Division of Human Rights primarily relies on individual complaints in order to investigate potential discrimination and harassment. We encourage the Legislature to provide the necessary funding for the Division to proactively investigate companies and industries known to

[14] *Id.*
[15] *Id.*
[16] Industry-Wide Agreement between New York Hotel and Motel Trades Council, AFL-CIO and Hotel Association of New York City, Inc. (July 2012), http://hotelworkers.org/images/uploads/NYC_Hotel_Industry_Wide_Agreement.pdf.

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have particularly high rates of discrimination and harassment, such as the retail industry, food service industry, home health care industry, construction industry, and hospitality industry. While New York has begun to do this, increasing strategic enforcement would put employers throughout these industries on notice that harassment and discrimination will not be overlooked in low-wage industries and employers will face consequences for creating hostile work environments for women.

When someone files a complaint with the Division, the Division must undergo a lengthy process to investigate the complaint. For complainants who remain at the same employer during the investigation, this could mean subjecting themselves to continued harassment while the Commission investigates the complaint. For those complainants that may have been fired or left their jobs due to harassment, it means the complainant must wait often more than a year for a resolution to a traumatic event. Fast tracking certain harassment and discrimination complaints, particularly around time sensitive issues such as pregnancy discrimination and sexual harassment, would ensure complainants receive swift determinations and employers face more immediate consequences for their actions.

Recommendation #6: Pass a State-Wide Paid Safe and Sick Leave Law

In addition to economic consequences, workers who face discrimination and harassment in the workplace may also suffer physical and/or health consequences. Nearly twenty percent of female rape victims and ten percent of male rape victims said that their victimization causes them to lose time from work.[17] New York State should guarantee that every worker in the state can earn and use a minimum

[17] Patricia Tjaden & Nancy Thoennes, Nat'l Inst. of Justice, U.S. Dep't of Justice, *Extent, Nature, and Consequence*s of *Rape Victimization: Findings from the National Violence Against Women Survey*, (Jan. 2006), https://stacks.cdc.gov/view/cdc/21950.

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amount of paid sick time to care for themselves and their families when they are ill, injured, or need preventive care. Moreover, the law should also allow for paid time off for "safe time" purposes to address certain non-medical needs that may arise if a worker or a worker's family member are victims of domestic violence, a sexual offense, stalking, or human trafficking. The policy should also include clear prohibitions on retaliation for using paid sick time protected under the law.[18] New York City already has a paid sick and safe leave law and Westchester County has a paid sick leave law.[19] It is time for New York State to guarantee that right to all workers in the state.

Recommendation #7: Support Equal Pay Measures and One Fair Wage for Tipped Workers

When workers face sexual harassment, it can often mean they lose out on opportunities to advance in the workplace. If a worker must leave their job for safety reasons, or are illegally forced out due to retaliation, their prior salary may not reflect the value they can bring to a job, but rather reflects advancement cut short by illegal behavior. That past salary should not then be a prerequisite for future earnings. To that end, we urge the legislature to broadening equal pay protections by prohibiting pay discrimination against all protected classes and banning inquiries into, and reliance, on salary history this session.

The State should also support the effort to end the separate minimum wage for tipped workers and set one minimum wage for all workers so that they are guaranteed a livable wage.[20] Unsurprisingly,

[18] *See* A Better Balance, *2019 ABB New York State Policy Agenda* (Jan. 2019), https://www.abetterbalance.org/resources/new-york-policy-agenda/.
[19] *See* N.Y.C. Admin. Code § 20-911—20-924; Laws of Westchester County, Article III, Chapter 700.
[20] *See Fact Sheet: Minimum Wage for Tipped Workers*, N.Y. State Dep't of Labor (2016), https://labor.ny.gov/formsdocs/factsheets/pdfs/p717.pdf.

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the tipped worker industry is predominantly female. Nearly seventy percent of tipped workers are women, a large percentage of whom are women of color, and forty percent are mothers.[21] States that have a sub-minimum wage for tipped workers have double the rate of sexual harassment as those states with one fair wage.[22] Eliminating the sub-minimum wage for tipped workers will not only guarantee that workers make a livable wage; it will also reduce the pressures that contribute to sexual harassment in the industry.[23]

CONCLUSION

We thank the Legislature for taking the time to consider this issue in a nuanced and thoughtful way. A Better Balance looks forward to working with closely with you to effectuate the above-proposed recommendations.

[21] *See* Restaurant Opportunities Centers United, *The Glass Floor: Gender-Based Harassment In The Restaurant Industry* (Oct. 2014), http://rocunited.org/wp-content/uploads/2014/10/REPORT_The-Glass-Floor-Sexual-Harassment-in-the-Restaurant-Industry2.pdf/.
[22] *Id.* at 2.
[23] *Id.* at 4.

Patricia Verne

Thank you Assemblymembers and Senators for giving me this opportunity to share my comments on sexual harassment and One Fair Wage.

My name is Patricia and I live in Brooklyn. I am a member of the Restaurant Opportunities Center of New York and I have worked in the restaurant industry and earned tips for 2 years.

I enjoy working in restaurants because people have to eat every day and I like being a part of feeding a community, I like helping create good experiences. Even though I help create good experiences for people being dependent on tips creates stress and an environment that fosters sexual harassment.

I've dealt with sexual harassment from my co-workers and guests. I often have to deal with uncomfortable comments, I get pressured for my phone number and to go on dates, I have experienced co-workers deliberately brushing up against me, and I've also been told by co-workers that I have to dress sexier to help earn more tips.

These things happened to me weekly. I remember guests, even though they saw I was busy would try and get my attention to try and get my phone number. I even had an instance when I went to change my shirt for work and didn't close the door all the way. A regular saw and pushed the door open, I tried to close it but he wouldn't let me. I had to get to work so I just changed, I was didn't say anything- I was so busy and this was a regular guest. But it's not just guests, my co-workers have also asked intimate and inappropriate questions, made inappropriate gestures and faces and I just brushed it off and kept moving.

I'd be happy when a day went by and no inappropriate remarks or gestures were made. Most of the time when I've experienced these things I just brush it off and pushed through, I have to work. With the women I worked with we'd chat, just for stress relief and to share our experiences- we had to support each other.

It's not right to be dependent on tips, we need the full minimum wage, I hope that you help us make New York the 8th One Fair Wage state. A dependence on tips leaves tipped workers vulnerable to experiencing sexual harassment in the workplace.

Serena Thomas
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Thank you Assemblymembers and Senators for giving me this opportunity to share my comments on sexual harassment and One Fair Wage.

My name is Serena Thomas and I have been in New York for almost 2 years now and am originally from Minnesota. I work with the Restaurant Opportunities Center of New York and have been a tipped restaurant worker for 12 years now and am now also a worker organizer.

My first job was at Arby's when I was 15. Since then I've gone on to work many positions including server and bartender. I love the hustle, meeting new people and seeing the same faces, and learning about new foods and drinks. Co-workers also become new friends and your team can really become a family. I like to know that while I'm helping others, also creating community.

Even though this work can be rewarding, I still have to depend on tips. Here in New York, we have a tiered wage system which means I get paid less than that average wage, making those tips necessary to make it to minimum wage. That means, if I want to make those tips, please the customer is my number one goal, and some of the customers want to take advantage of that. For the last 12 years, there have been a variety of levels of sexual harassment that are something consistent.

I have experienced harassment such as unwanted looks, comments, and physical actions from different customers. The most common are comments on how I look. Sometimes its, 'you look sexy today' or 'I like your skirt' when I know they aren't just liking my fashion, it's my body in the clothes I'm wearing. I have had men ask for my number, when I work so they can come back. I have had managers ask me on dates because they need a 'pretty girl' on their arm at the concert.

The responses to when I put my foot down are all different. When it is with a manager, I start getting slow shifts, slow sections, and sometimes I just feel demoted. When its customers, it can range but continued harassment, a ton to clean up, to no tip at all. With tips being so important, this makes me just brush off the harassment rather than upsetting the customer, or 'tattling' on the manager.

Today we are here to try and figure out how we are going to change society's understanding of sexual harassment and it's going to be a big job, and it has already started. But one way I know that can help the tipped workers of New York is One Fair Wage. Coming from a one fair wage state, where I was making a fair wage for an hourly pay, I experienced less harassment on the job and when I did, i was able to put my foot down. Making $15/hr would mean workers could call more of these offenders out and not be worried if they don't tip because we would know we would be making enough to pay our bills with just our hourly wage.

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Testimony of Rosa Aliberti, Esq.
Berke-Weiss Law PLLC
Before the New York State Senate and New York State Assembly

Joint Senate and Assembly Public Hearing
New York, New York
May 24, 2019

Distinguished Members of the Legislature—thank you for convening this important joint committee hearing on Sexual Harassment in the Workplace, and for giving me the opportunity to testify. I am Rosa Aliberti, an associate at Berke-Weiss Law PLLC in Manhattan, a woman-owned employment law firm that represents both employers and employees.

At a time when our cultural standards are changing more rapidly than our legal system, I applaud the Legislature for passing a series of laws last session to address the issue of sexual harassment in the workplace. Society has demanded change, accountability, and justice in the face of the horrific events that are every day occurrences for many women in the workplace.

Sex harassment in the workplace is not new. Employees and employers have dealt with issues of sexual harassment in the workplace before the #MeToo movement began, and continue to do so as both employers and employees have welcomed and embraced changes to anti-discrimination statutes, and have advocated for clearer laws, processes, and guidance on combatting and putting an end to sexual harassment. The changes that have been made to date are good, but we can do better.

My goal today is to raise some of the practical challenges employees and employers continue to face in the fight against sexual harassment, in the hope that the laws can be strengthened and clarified so sex harassment can be eliminated from the workplace.

Challenges faced by employees

The #MeToo movement brought to light many issues plaintiff-side labor and employment lawyers have grappled with when helping victims of sexual harassment. After listening to deeply personal, offensive, and humiliating accounts of harassment in the workplace, we often must explain to victims why their experience might not be actionable under the anti-discrimination laws.

Federal, state, and city anti-discrimination laws have different standards for what constitutes sexual harassment. Under the New York City Human Rights Law, for example,

sexual harassment is a form of gender discrimination. A victim needs to only demonstrate that they were treated less well than other employees because of their gender.[1]

In contrast to New York City's broad standard, the standard for sexual harassment under the New York State Human Rights Law, like federal law (Title VII), looks at whether the conduct complained of is "sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment."[2] Courts, lawyers, and employers often are left fighting over and making arbitrary delineations about what constitutes "severe and pervasive" conduct. For a victim to hear that someone made a judgment call, finding the unwelcome sexual conduct they experienced was not "severe or pervasive" under the law, and therefore not actionable, is enough to retraumatize victims, dissuading them from speaking out, and creating a chilling effect on other workers who may be facing similar challenges.

Additionally, in New York, the onus is on the victim, who is often traumatized by their experience, afraid of retaliation, and unable to afford losing their job, to report harassment to the employer. Studies show that sexual harassment complaints are underreported in the workplace, notwithstanding policies and reporting mechanisms in place. Still, under the New York State Human Rights Law, an employer also may be able to avoid vicarious liability for sexual harassment committed by a supervisory employee if it can show that (1) it took reasonable steps to prevent and promptly correct sexual harassment in the workplace; and (2) the victim unreasonably failed to take advantage of the employer's preventive or corrective measures.[3] Thus, if an employer can show that it had anti-harassment policies and reporting mechanisms in place, and the victim did not avail herself of these policies and procedures, then the employer may escape liability.

In sexual harassment cases, the burden is on victims of sexual harassment to prove their case. In practice, this means that that the victim is often revictimized. Why? Generally, the evidence comes down to testimony—often it's "he said versus she said." The employer may have access to more documentation about the claim in question, but there is no obligation to share this information with the victim. Often witnesses, if any, are employees of the employer who are afraid of retaliation, reluctant to participate in investigations, or do not recollect events or testify truthfully. Simply put, there is a tacit understanding that their job may be at stake, even though the law has protections against retaliation. Also, the cost of proving a victim's case or establishing a defense has increased exponentially with the existence of electronic devices and communications through email, text messages, and social media. Forensic discovery can cost thousands of dollars to execute. Generally, a victim is disadvantaged because the expense may limit their access to the numerous sources of electronic discovery. At the same time, employers clamor for access to privately maintained

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[1] *See Williams v. New York City Hous. Auth.* 872 N.Y.S. 2d 27, 39 (2009).
[2] *Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57, 67 (1986) (internal citations omitted).
[3] *See Faragher v. City of Boca Raton*, 524 U.S. 775 (1998); *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742 (1998).

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personal devices, potentially exposing victims to wide ranging scrutiny while prohibitive costs and other barriers limit the victim's access to the employer's records.

If a victim hires an attorney to represent them in pre-litigation negotiations, that decision may open the victim's life to extensive scrutiny, as the employer tries to attack their credibility, even when there is substantial evidence supporting their allegations of sexual harassment. We have heard employers use a victim's sexual history, prior complaints, financial status, and history, against them, as reasons why the victim is not to be believed.

Further, the new legislation requiring that the victim settling a sexual harassment claim express their preference for confidentiality in a separate written agreement has not changed the fact that employers continue to seek confidentiality, and believe that any settlement payment must be in exchange for confidentiality. Victims often want confidentiality, but, they also may want to share their experiences, and some employers are reluctant to provide them with any flexibility to do so. In addition, there are terms other than non-disclosure provisions in settlement agreements which silence victims, such as provisions prohibiting disparagement of the employer, the harasser, and other named persons who might have aided or abetted the harassment. Breaching non-disclosure and non-disparagement provisions in settlement agreements expose victims to the risk of a lawsuit and damages, so silence remains the safer option to avoid relitigating their trauma.

We also have found that some victims are apprehensive about the non-waivable 21-day consideration period which must be observed before a preference agreement can be signed, followed by a 7-day non-revocation period, and the need to sign another agreement to memorialize these requirements. Once a settlement is reached in principle, victims often are eager to put the experience behind them, and this inflexible rule may create undue delay for victims looking to put the matter to the rest after an already arduous process.

Challenges faced by employers

For the purposes of today's hearing, I would like to highlight the challenges faced by small and midsized employers.

These employers generally have welcomed changes to the law aimed to protect victims of sexual harassment. But, there are challenges to compliance, which may be lessened with clearer guidance. Small employers generally have the same obligations as large employers under the law, but they do not have the same resources as their larger counterparts. For example, a small, low-margin, high turnover retail business, generally employing low-income workers from various backgrounds, who speak many different languages and have varying levels of education, and who do not all work a 9 a.m.-5 p.m. office type shift, may struggle to understand the requirements and implement compliant training for its workforce.

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The importance of anti-sexual harassment training cannot be overstated, and the fact that the New York State Division on Human Rights and the Department of Labor have created and disseminated training resources through the New York State website means that all employers have access to training tools. While the training videos are a good start, and we appreciate that the trainings are being offered in more languages than just English, there are still employees who are not served by the languages made available by the State Division and Department of Labor.

A low-earning immigrant community of workers in a retail store will have different training needs than a large corporation with office workers. The model policies are eight pages long and do not make for an easy reading. Plus, they are not tailored to a specific employer and workforce, which may well limit their effectiveness in combatting sex harassment. We encourage the State Division and Department of Labor to continue to create basic trainings, including bystander and civility trainings, and streamlined model policies for employees in different types of industries, as well as in different languages.

Small employers and their employees also may not have access to technology where employees can watch the state-provided videos. Financial support also may be appropriate to help small businesses obtain technology and/or translators to ensure that meaningful sexual harassment training is available to all employees.

Employers face additional challenges. Workplace investigations regarding sexual harassment are not new. It long has been best practice for employers to perform investigations of complaints of sexual harassment to evaluate the claim and determine what action to take. But, it is new for those investigations to take a "one size fits" all approach. The "Minimum Standards for Sexual Harassment Prevention Policies" promulgated by New York State requires employers to create policies which include "include a procedure for the timely and confidential investigation of complaints and ensure due process for all parties." Employers are being directed to balance two requirements which are potentially at odds—performing a confidential investigation that allows for due process for all parties. Due process may include the opportunity for both parties to see the evidence against them and respond, and to appeal any decision made against them. But employers are not under any obligation to share the results of their investigation with the relevant parties, and may have important reasons not to do so, for example, protecting the confidentiality of other employees in the workplace, or the person who brought the complaint in the first place. Without further guidance from the Department of Labor and the Division of Human Rights, employers are left to their own devices to interpret and parse out this complex directive.

In addition, both employers and victims of discrimination are struggling to understand which claims fall under the prohibition against non-disclosure provisions. As discussed above, sex harassment is just one form of illegal discrimination. Often, victims raise a variety of claims under a myriad of federal, state, and local anti-discrimination laws, creating gray area for the

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requirement of a preference agreement, with overlapping claims and issues all being part of the same situation. Employers and employees would benefit from receiving additional guidance as to which claims have a "factual foundation [] which involves sexual harassment,"[4] before this issue is litigated.

Finally, as discussed above, employers and employees have expressed practical concerns over the 21-day consideration period and 7-day revocation period, required for "preference agreements." Generally, parties to a settlement spend a great deal of time and effort negotiating a resolution of a victim's claims, going back and forth to agree on terms, and then drafting and modifying a written settlement agreement. The process of reaching a final agreement may take weeks, even months in some instances. In order to ensure that the preference agreement is enforceable, employers have been interpreting the 21-day consideration period to run from the date the preference agreement is given to the employee in its final form, prolonging resolution until the consideration and revocation periods expire. Because the non-waivable the 21-day consideration/7-day revocation periods may come after a lengthy negotiation process, the additional 4-week period required before a final resolution can be achieved may add undue delay, and add an element of uncertainty to the settlement process. Employers and employees would benefit from additional guidance and more flexibility in addressing this new requirement.

[4] N.Y. Civil Practice Law & Rules 5003-b; N.Y. General Obligations Law 5-336

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